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H.C.P.No.2189 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2022

Coram

The Honourable Mr. Justice **S.VAIDYANATHAN**
and
The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

H.C.P.No.2189 of 2021

S.Malathi

.. Petitioner

Vs

1.State of Tamil Nadu represented by
The Secretary to Government,
Prohibition and Excise Department, (Home)
Chennai – 600 009.

2.The Commissioner of Police,
Detaining Authority,
Greater Chennai,
Vepery,
Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison,
Vellore – 632 002.

4.The Inspector of Police,
E-1, Mylapore Police Station,
Chennai.

.. Respondents



H.C.P.No.2189 of 2021

Petition filed under Article 226 of the Constitution of India to

issue a writ of Habeas Corpus to call for the records relating to the detenu's detention order passed by the 2nd respondent *vide* No.343/BCDFGISSSV/2021 dated 18.11.2021 and set aside the same and produce the detenu Suresh @ Naina Suresh, son of Perumal, male, aged about 40 years, now detained in the Central Prison, Vellore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Prabhakaran

For Respondents : Mr.M.Babu Muthumeeran
Addl. Public Prosecutor

ORDER

S.VAIDYANATHAN, J.

and

A.D.JAGADISH CHANDIRA, J.

The petitioner is the wife of the detenu Suresh @ Naina Suresh, son of Perumal, male, aged about 40 years. The detenu has been detained by the second respondent by his order in No.343/BCDFGISSSV/2021 dated 18.11.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



H.C.P.No.2189 of 2021

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made on behalf of the detenu was not considered in time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.



H.C.P.No.2189 of 2021

WEB COPY

5. The Detention Order in question was passed on 18.11.2021. A representation was made on behalf of the detenu on 31.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 04.01.2022. The remarks were duly received on 04.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 18.04.2022.

6. It is the contention of the petitioner that there was a delay of 31 days in submitting the remarks by the Detaining Authority, of which, 11 days were Government Holidays and hence there was an inordinate delay of 20 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 04.02.2022 and there was a delay of 73 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 25 days were Government Holidays, hence, there was an inordinate delay of 48 days in considering the representation.



H.C.P.No.2189 of 2021

7. In **Rekha vs. State of Tamil Nadu (2011 (5) SCC 244)**,

the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In **Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145)**, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In **Tara Chand vs. State of Rajasthan and others**, reported in **1980 (2) SCC 321**, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 20 days in submitting the remarks by the Detaining Authority and unexplained delay of 48 days in considering



H.C.P.No.2189 of 2021

the representation by the Hon'ble Minister for Home, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in No.343/BCDFGISSSV/2021 dated 18.11.2021, passed by the second respondent is set aside. The detenu, viz., Suresh @ Naina Suresh, son of Perumal, male, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(S.V.N., J.) (A.D.J.C., J.)
04.07.2022

Index: Yes/No
nsd



H.C.P.No.2189 of 2021

WEB COPY

To

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Detaining Authority,
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Vepery,
Chennai – 600 007.
- 3.The Superintendent of Prison,
Central Prison,
Vellore – 632 002.
- 4.The Inspector of Police,
E-1, Mylapore Police Station,
Chennai.
- 5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai – 9.
- 6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.2189 of 2021

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H.C.P.No.2189 of 2021

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