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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

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The Honourable Mr. Justice PARESH UPADHYAY
and
The Honourable Mr. Justice A.D.JAGADISH CHANDIRA

H.C.P.No.2173 of 2021

Anand .. Petitioner/Son of the detenue

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.

3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.

4.The Superintendent,
Special Prison for Women,
Vellore - 2.

5.The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 22.12.2021 in D.O.No.120/2021-C2 against the petitioner's mother Kannammal, female, aged 40 years, W/o.Kannayiram, who is confined at the Special Prison for Women, Vellore and set aside the same and direct the respondents to produce the detenue before this Court and set her at liberty.

For Petitioner : Mr.D.Balaji

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



ORDER

(Order of the Court was made by A.D.JAGADISH CHANDIRA, J.)

The petitioner is the son of the detenue Kannammal, female, aged 40 years, W/o.Kannayiram. The detenue has been detained by the second respondent by his order in D.O.No.120/2021-C2 dated 22.12.2021, holding her to be a "Bootlegger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

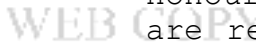
2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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 petitioner 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 detenue and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 22.12.2021. A representation was made on behalf of the petitioner on 20.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.01.2022. The remarks were duly received on 02.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 20.04.2022.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which, 3 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 02.02.2022 and there was a delay of 77 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, 24 days were Government



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 detainee.

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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.120/2021-C2 dated 22.12.2021, passed by the second respondent is set aside. The detainee, viz., Kannammal, female, aged 40 years, W/o.Kannayiram, is directed to be released forthwith unless her detention is required in connection with any other case.

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Chennai - 600 009.



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3.The Superintendent of Police,
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4.The Superintendent,
Special Prison for Women,
Vellore - 2.

5.The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai District.

6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.

7.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2173 of 2021

GPL (CO)
SB (24/06/2022)