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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.109 of 2022

Anitha

... Petitioner/

wife of the Detenu

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,, Chennai - 9.
- 2.The District Collector & District Magistrate,
O/o.The District Collector and District Magistrate Office,
Kanyakumari District at Nagercoil,
Kanyakumari District.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, by calling for the records relating to the impugned order of detention made in P.D.No.31 of 2021 dated 07.09.2021 on the file of the District Collector and District Magistrate, Kanyakumari District at Nagercoil, the second respondent herein, branding the detenu by name Edwin Robert @ Edwin @ Chappaiyan, S/o.Samuvel, aged about 41 years, as "Drug Offender", who is now confined in Central Prison, Palayamkottai, Tirunelveli District and quash the impugned order of detention and set the detenu at liberty by producing the detenu before this Honourable Court.

For Petitioner : Mr.P.Mani Anandh

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

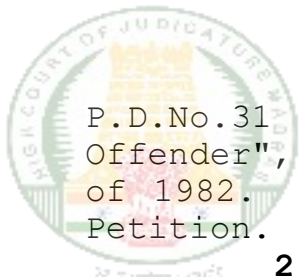
O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The Petitioner is the wife of the detenu, namely, Edwin Robert @ Edwin @ Chappaiyan, S/o.Samuvel, aged about 41 years. The detenu has been detained by the second respondent by his order in



P.D.No.31 of 2021 dated 07.09.2021, holding him to be a "Drug Offender", as contemplated under Section 2(e) 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 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 his argument 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 representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay with regard to the same.

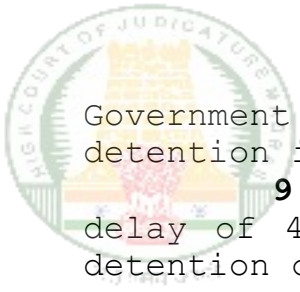
4.The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been 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.

5.The Detention Order in question was passed on 07.09.2021. The petitioner made a representation, dated 24.01.2022 and the same was received on 28.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.01.2022 and the remarks were received on 11.02.2022. Thereafter, the Deputy Secretary has dealt with the representation on 11.02.2022 and the Minister for Electricity, P & E has dealt with the representation on 14.02.2022. Ultimately, the petitioner's representation was rejected on 18.04.2022, in which there is a delay of 41 days after excluding the Government Holidays of 21 days, in considering the representation which remains unexplained.

6.In ***Rekha vs. State of Tamil Nadu***, reported in **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.

7. In ***Sumaiya vs. The Secretary to Government***, reported in **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.

8. 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.

9. In the subject case, admittedly, there is an unexplained delay of 41 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

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10. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.31 of 2021 dated 07.09.2021, passed by the second respondent is set aside. The detenu, namely, Edwin Robert @ Edwin @ Chappaiyan, S/o.Samuvel, aged about 41 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar
(CS.I)

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/ /2022

Sub Assistant Registrar(CS)

To

- 1.The the Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department, Secretariat,,
Chennai - 9.
- 2.The District Collector & District Magistrate,
O/o.The District Collector and District Magistrate Office,
Kanyakumari District at Nagercoil, Kanyakumari District.
- 3.The Superintendent,
Central Prison,
Palayamkottai, Tirunelveli District.
- 4.The Joint Secretary to Government,
Public (Law & Order)
Fort Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
H.C.P (MD) .No.109 of 2022
27.04.2022