



HCP(MD)No.160 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.160 of 2022

Vasuki

... Petitioner / Mother of Detenue

Vs.

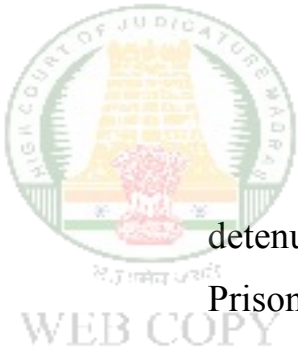
1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

2.The District Collector and District Magistrate,
District Collector's Office,
Thanjavur District.

3.The Superintendent,
Central Prison,
Tiruchirapalli.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records pertaining to the Detention Order passed by the second respondent in Detention Order made in P.D.No.150/2021 dated 19.12.2021 U/s 2(ggg) of TN Act,14 of 1982 as a Sexual Offender and quash same and direct respondents to produce the



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detenu namely, Sivakumar, S/o.Ramalingam aged 34 detained at Central Prison, Trichy before this Court and set him of liberty forthwith.

For Petitioner : Mr.A.Arunprasad

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Sivakumar, S/o.Ramalingam, aged 34 years. The detenu has been detained by the second respondent by his order in P.D.No.150/2021 dated 19.12.2021 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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.



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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 representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. 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 learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and the case was taken on



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file in Spl.S.C.No.24 of 2022 by the Special Court for POCSO Act cases, Tanjore. It was further submitted that there were 20 witnesses and already, 19 witnesses have been examined and the case is posted on 20.09.2022 for examination of Investigation Officer.

6.The Detention Order in question was passed on 19.12.2021. The petitioner made a representation dated 01.02.2022. The remarks were called for by the Government from the Detaining Authority on 08.02.2022. The remarks were duly received on 15.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

7.It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 4 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 15.02.2022 and there was a delay of 61 days, in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it,



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of which, 20 days were Government Holidays and hence, there was inordinate delay of 41 days in considering the representation.

8.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.

9.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.

10.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.



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11.In the subject case, admittedly, there is an inordinate and unexplained delay of 4 days in submitting the remarks by the Detaining Authority and unexplained delay of 41 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

12.In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.150/2021 dated 19.12.2021 passed by the second respondent is set aside. The detenu, viz., Sivakumar, S/o.Ramalingam aged 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
16.09.2022

Index : Yes/No
Internet : Yes
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Madurai Bench of Madras High Court,
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