



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2022

CORAM

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

H.C.P. (MD) No.199 of 2022

M.Santhiya

...Petitioner/wife of the detenu

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600009

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.

3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in H.S.(M)Confdl No.12/2022, dated 12/01/2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Marimuthu, S/o.Muniyasamy aged about 27 years, now confining as "Drug Offender" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

J. NISHA BANU, J.
and
N. ANAND VENKATESH, J.

The petitioner is the wife of the detenu viz., Marimuthu, S/o.Muniyasamy, aged about 27 years. The detenu has been detained by the second respondent by his order in H.S(M)Confdl.No.12/2022



dated 12.01.2022 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 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.

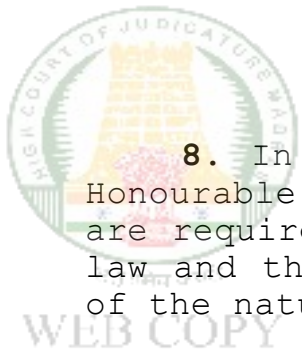
3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, 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 final report was filed before the II-Additional Special Judge for NDPS Act cases, Madurai and the same was taken on file in C.C.No.447/2022. The learned Additional Public Prosecutor further submitted that the charges have been framed and the case is now at the stage of trial.

6. The Detention Order in question was passed on 12.01.2022. The petitioner made a representation dated 04.02.2022. The remarks were called for by the Government from the Detaining Authority on 09.02.2022. The remarks were duly received on 21.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 20.04.2022.

7. It is the contention of the petitioner that there was a delay of 11 days in submitting the remarks by the Detaining Authority, of which 7 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 21.02.2022 and there was a delay of 56 days, in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 18 days were Government Holidays and hence, there was inordinate delay of 38 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.

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 38 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 considered view of this Court, considering the seriousness of the offence involved in this case, we deem it proper to direct the II-Additional Special Judge for NDPS Act Cases, Madurai, to complete the proceedings within a period of three months from the date of receipt of a copy of this order. The counsel appearing on behalf of the accused person shall cooperate for the early disposal of the case within the time stipulated by this Court. A copy of this order shall also be marked to the II-Additional Special Judge for NDPS Act Cases, Madurai.

13. In the result, the Habeas Corpus Petition is allowed with the above direction and the order of detention in H.S(M)Confdl No.12/2022 dated 12/01/2022, passed by the second respondent is set aside. The detenu, viz. Marimuthu, S/o.Muniyasamy, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (A.E)

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/11/2022

Sub Assistant Registrar (CS)



PJL

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600009

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

3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

4.The II-Additional Special Judge,
for Exclusive Trial of Cases under NDPS Act,
Madurai.

5. The Joint Secretary to Government,
Public (Law & Order),
Fort. St.George,
Chennai -600009.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.199 of 2022

14.10.2022

AMS (03.11.2022) 4P 7C