



HCP(MD)No.239 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.(MD)No.239 of 2022

Ayisha

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Madurai.

4.The Inspector of Police,
Cumbam South Police Station,
Theni District.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the Detention Order in Detention Order No.04/2022 dated 24.01.2022 on the file of the second respondent and quash the same and direct the respondents to produce the body or person of the petitioner's husband namely, Vajith, Son of Bakrudeen, aged about 36 years, now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel
for Mr.J.Sulthan Basha
For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

ORDER

[Order of the Court was made by ***P.N.PRAKASH, J.***]

The petitioner is the wife of the detenu viz., Vajith, Son of Bakrudeen, aged about 36 years. The detenu has been detained by the second respondent by his order in D.O.No.04/2022 dated 24.01.2022, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil



HCP(MD)No.239 of 2022

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



HCP(MD)No.239 of 2022

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 24.01.2022. The petitioner made a representation dated -Nil-. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.03.2022. The remarks were duly received on 18.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.05.2022.

6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which 4 days was a Government Holiday and hence there was an inordinate delay of 11 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 18.03.2022 and there was a delay of 62 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy



HCP(MD)No.239 of 2022

Secretary dealt with it, of which 21 days were Government Holidays, hence, there was inordinate delay of 41 days in considering the representation.

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.



HCP(MD)No.239 of 2022

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 11 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.04/2022 dated 24.01.2022, passed by the second respondent is set aside. The detenu, viz., Vajith, Son of Bakrudeen, aged about 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P.,J.) (R.H.,J.)
29.08.2022

Index: Yes/No
Internet : Yes / No
RM



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