



H.C.P.(MD) No.229 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

H.C.P.(MD) No.229 of 2022

Otchammal

... Petitioner

-VS-

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Special Prison for Women,
Madurai District.

... Respondents



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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 passed in No.07/BCDFGISSSV/2022 dated 28.01.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the body or person of the detenue namely, Otchammal wife of Chandran, aged 53 years, now detained as a Drug Offender at Special Prison for Women, Madurai, before this Court and set her at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

ORDER

[Made by R.HEMALATHA, J.]

The petitioner is the detenue viz., Otchammal, aged about 53 years, wife of Chandran. The detenue has been detained by the second respondent by his detention order in No.07/BCDFGISSSV/2022 dated 28.01.2022, holding him to be a "Drug Offender", as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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



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5. The Detention Order in question was passed on 28.01.2022. The petitioner made a representation on 14.02.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.02.2022. The remarks were duly received on 24.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

6. It is the contention of the petitioner that there was an inordinate delay of 9 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holiday and hence there was a delay of 7 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 24.02.2022 and there was an inordinate and unexplained delay of 50 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, hence, there was an inordinate delay of 32 days in considering the representation.



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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.

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 detainee 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.



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10. In the subject case, admittedly, there is an inordinate and unexplained delay of 7 days in submitting the remarks by the Detaining Authority and unexplained delay of 32 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 in No.07/BCDFGISSSV/2022 dated 28.01.2022, passed by the second respondent is set aside. The detenue, viz., Otchammal, aged about 53 years, wife of Chandran, is directed to be released forthwith unless his detention is required in connection with any other case.

[P.N.P., J.] [R.H., J.]
01.09.2022

Index : Yes / No
Internet : Yes / No
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