



HCP(MD)No.289 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.08.2022

CORAM

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mrs. Justice **R.HEMALATHA**

H.C.P.(MD)No.289 of 2022

Karpagavalli

... Petitioner/Wife of the Detenue

Vs

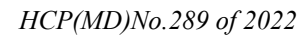
1. The Additional Principal Secretary to Government,
Home Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records in pursuant to the proceedings of the 2nd respondent in Detention Order in H.S.(M) Confdl No. 01/2022, Dated 05.01.2022 quash the same and consequently direct the respondents



For Petitioner : Mr. K. Suyambu Linga
Bharathi.

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

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

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 Detention Order in question was passed on 05.01.2022. The petitioner made a representation dated 21.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.01.2022.



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The remarks were duly received on 10.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.04.2022.

6. It is the contention of the petitioner that there was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 3 days were Government holidays and hence there was an inordinate delay of 10 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 10.02.2022 and there was a delay of 66 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, 22 days were a Government Holiday and hence, there was inordinate delay of 44 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.



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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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 10 days in submitting the remarks by the Detaining Authority and unexplained delay of 44 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



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of detention in H.S.(M) Confdl No. 01/2022, Dated 05.01.2022 passed by the second respondent is set aside. The detenu, viz., Appanasamy S/o.Muthusamy, aged about 44 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.)
17.08.2022

Index : Yes/No

Internet : Yes

RR

To

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

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

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

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



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