



HCP(MD)No.365 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

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.365 of 2022

Subitha

... Petitioner / Wife of the Detenue

Vs.

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

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

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

...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 M.H.S.Confdl.No.08 of 2022 dated 27.01.2022 and quash the same and direct the respondents to produce the petitioner's husband body or person by name, Bhavan Kumar



HCP(MD)No.365 of 2022

S/o.Krishnasamy aged about 36 years, detained as 'Goonda' and lodged in Palayamkottai Central Prison before this Court and set him at liberty.

For Petitioner : Mr.N.Ananthapadmanabhan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Bhavan Kumar, S/o.Krishnasamy, aged about 36 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.08 of 2022 dated 27.01.2022 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.



WEB COPY

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. 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



HCP(MD)No.365 of 2022

and it was taken on file by the Special Court for POCSO Act cases, Tirunelveli, in Spl.S.C.No.55 of 2022. It was further submitted that the case stands posted for the evidence of LWs.1 and 2.

6.The Detention Order in question was passed on 27.01.2022. The petitioner made a representation dated 03.02.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 10.02.2022. The remarks were duly received on 07.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 13.04.2022.

7.It is the contention of the petitioner that there was a delay of 55 days in submitting the remarks by the Detaining Authority, of which 19 days were Government holidays and hence, there was an inordinate delay of 36 days in submitting the remarks.

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



HCP(MD)No.365 of 2022

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 36 days in submitting the remarks by the Detaining Authority. 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 M.H.S.Confdl.No.08 of 2022 dated 27.01.2022 passed by



HCP(MD)No.365 of 2022

the second respondent is set aside. The detenu, viz., Bhavan Kumar, S/o.Krishnasamy, aged about 36 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
sm



HCP(MD)No.365 of 2022

To:

WEB COPY

- 1.Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Trinelveli District,
Trinelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Trinelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.365 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

sm

H.C.P.(MD)No.365 of 2022

16.09.2022