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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2022

CORAM

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

H.C.P.(MD)No.346 of 2022

B.Mahalakshmi .. Petitioner /wife of the detenu

Vs.

1.State of Tamil Nadu
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George
Chennai - 600 009.

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

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

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records relating to the petitioner's husband detention order passed in No.59/2021 dated 29.11.2021 on the file of the 2nd respondent herein and set aside the same as illegal and

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direct the respondents to produce the body or person of the petitioner's husband namely, Baskaran, S/o.Karuppu, male aged about 40 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.Sadeskumar

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.HEMALATHA, J.**]

The petitioner is the wife of the detenu viz., Baskaran S/o.Karuppu, aged about 40 years. The detenu has been detained by the second respondent by his order in No.59/2021 dated 29.11.2021 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

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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 29.11.2021. The petitioner made a representation on 10.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.12.2021. The remarks were duly received on 07.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's

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representation on 18.04.2022.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which 7 days were Government Holidays and hence there was an inordinate delay of 13 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 07.01.2022 and there was a delay of 99 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 35 days were Government Holidays, hence, there was inordinate delay of 64 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**

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(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 13 days in submitting the remarks by the Detaining Authority and unexplained delay of 64 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 No.59/2021 dated 29.11.2021 passed by the second respondent is set aside. The detenu, viz., Baskaran S/o.Karuppu, aged about

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40 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.)
05.07.2022

Index : Yes/No
Internet : Yes
RR
To
1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George
Chennai - 600 009.

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

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

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

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and
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RR

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