



HCP(MD)No.404 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 23.09.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.404 of 2022

Fathima

.. Petitioner /Wife of the
detenu

Vs.

1.The State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Inspector of Police,
Thalamuthnagar Police Station,
Thoothukudi District.

4.The Superintendent of Prison,
Central Prison,
Palayamkottai.

.. 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 detention



HCP(MD)No.404 of 2022

order passed by the 2nd respondent in Detention Order H.S(M)Confdl.No. 36/2022 dated 24.02.2022 and quash the same and direct the respondents to produce the detenu Mariyan, S/o.Jerald, male aged 41 years, who is detained at Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner :Mr.R.Mariappan
For Respondent :Mr.A.Thiruvadikumar,
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Mariyan, S/o.Jerald, aged 41 years,. The detenu has been detained by the second respondent by his order in Detention Order H.S(M)Confdl.No.36/2022 dated 24.02.2022 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 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 learned Additional Public Prosecutor, on instructions, submitted that charge sheet has been filed before the learned Judicial Magistrate No.II, Thoothukudi, and it is yet to be taken on file. Hence, there



HCP(MD)No.404 of 2022

shall be a direction to the learned Judicial Magistrate No.II, Thoothukudi, to immediately act upon the final report and proceed in accordance with law.

6.The Detention Order in question was passed on 24.2.2022. The petitioner made a representation dated Nil. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.03.2022. The remarks were duly received on 30.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 04.04.2022.

7. It is the contention of the petitioner that there was a delay of 14 days in submitting the remarks by the Detaining Authority, of which 04 days were Government holidays and hence, there was an inordinate delay of 10 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 their rigour cannot be allowed to be diluted on the basis of the nature of the



HCP(MD)No.404 of 2022

alleged activities undertaken by the detenu.

WEB COPY

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 10 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 Detention Order H.S(M)Confdl.No.36/2022 dated 24.02.2022 passed by the second respondent is set aside. The detenu, viz.,



HCP(MD)No.404 of 2022

Mariyan, S/o.Jerald, aged about 41 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.)
23.09.2022

Index : Yes/No
Internet : Yes
Ns



WEB COPY



HCP(MD)No.404 of 2022

To

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



WEB COPY



HCP(MD)No.404 of 2022

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.
Ns

H.C.P.(MD)No.404 of 2022

23.09.2022