



HCP(MD)No.423 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.423 of 2022

Nithya

... Petitioner /Wife of the Detenue

Vs.

- 1.The State of Tamil Nadu,
Represented by the Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.
- 2.The District Collector and District Magistrate,
Dindigul District.
- 3.The Superintendent of Central Prison,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed by the second respondent in Detention Order No.123 of 2021 dated 30.12.2021 and quash the same and direct the respondents to produce the detenu, namely, Natrayan, S/o.Tamilselvan, aged about 29 years, now detained at Central Prison, Madurai before this Court set him at liberty.



HCP(MD)No.423 of 2022

For Petitioner : Mr.D.Venkatesh
For Respondents : 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., Natrayan, S/o.Tamilselvan, aged about 29 years. The detenu has been detained by the second respondent by his order in Detention Order No.123 of 2021 dated 30.12.2021 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 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 the investigation was completed and a final report was filed



HCP(MD)No.423 of 2022

and it was taken on file by the Mahila Court, Dindigul, in Spl.S.C.No.31 of 2022. It was further submitted that there are 24 witnesses, out of which, four witnesses have been examined and the case is now at the stage of examination of other witnesses and posted for hearing on 16.09.2022.

6.The Detention Order in question was passed on 30.12.2021. The petitioner made a representation dated 25.02.2022. The remarks were called for by the Government from the Detaining Authority on 28.02.2022. The remarks were duly received on 14.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.05.2022.

7.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 4 days were Government holidays and hence there was an inordinate delay of 9 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 14.03.2022 and there was a delay of 67 days, in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary



HCP(MD)No.423 of 2022

dealt with it, of which, 23 days were Government Holidays and hence, there was inordinate delay of 44 days in considering the representation.

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 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.



HCP(MD)No.423 of 2022

11.In the subject case, admittedly, there is an inordinate and unexplained delay of 9 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.

12.In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.123 of 2021 dated 30.12.2021 passed by the second respondent is set aside. The detenu, viz., Natrayan, S/o.Tamilselvan, aged about 29 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.423 of 2022

To:

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.
- 2.The District Collector and District Magistrate,
Dindigul District.
- 3.The Superintendent of Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.423 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

sm

H.C.P.(MD)No.423 of 2022

16.09.2022