



HCP(MD)No.493 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.07.2022

CORAM

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

H.C.P.(MD)No.493 of 2022

Chellapandiammal @ Mumtaj

.. Petitioner

Vs.

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

2.The District Collector / District Magistrate
Collectorate,
Madurai District.

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

.. Respondents

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 in B.C.D.F.G.I.S.S.S.V.No.28/2021, dated 13.12.2021 passed by the respondent No.2 on petitioner's husband namely, Chinnasamy



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@ Anwar Raja, S/o.Muniyandi @ Abdullah, Male, aged 41/2022 has been detained and branded as “Goonda” in exercise of the powers conferred by Section 3(1) under the Tamil Nadu Prevention of Dangerous activities of Boot-leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirate Act 1982 and confined at Central Prison, Madurai District and set his at liberty forthwith.

For Petitioner : Mr.S.Anandha Rajagopal

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

ORDER

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

The petitioner is the wife of the detenu viz., Chinnasamy @ Anwar Raja, S/o.Muniyandi @ Abdullah, aged 40/2021. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No. 28/2021, dated 13.12.2021 holding him to be a "Sand Offender", as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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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.



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5. The Detention Order in question was passed on 13.12.2021. The petitioner made a representation on 27.01.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.01.2022. The remarks were duly received on 22.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 20.04.2022.

6. It is the contention of the petitioner that there was a delay of 23 days in submitting the remarks by the Detaining Authority, of which 7 days were Government Holidays and hence there was an inordinate delay of 16 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 22.02.2022 and there was a delay of 56 days in considering the representation by the Hon'ble Minister dealt with it, of which 18 days were Government Holidays, hence, there was inordinate delay of 38 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



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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 (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 16 days in submitting the remarks by the Detaining Authority and unexplained delay of 38 days in considering the representation by the Hon'ble Minister. The impugned detention order is, therefore, liable to be quashed.



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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.28/2021, dated 13.12.2021 passed by the second respondent is set aside. The detenu, viz., Chinnasamy @ Anwar Raja, S/o.Muniyandi @ Abdullah, aged 40/2021, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P.,J.) (R.H.,J.)
08.07.2022

Index : Yes/No
Internet : Yes
vsm



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