



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.486 of 2022

WEB COPY

M.Sagutha
the

.. Petitioner /Wife of
detenu

Vs.

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

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order passed in M.H.S.Confdl.No.18/2022 dated 16.02.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband ie., Mayandi, aged about 54 years, S/o.Pandarathevar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner :Mr.N.Pragalathan

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., Mayandi, aged about 54 years, S/o.Pandarathevar, . The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.18/2022 dated 16.02.2022 holding him to be a "Goonda", as contemplated under Section 2(f) 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.

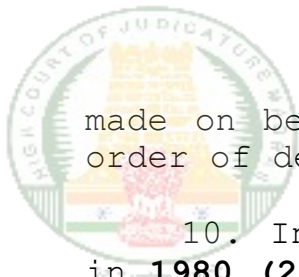
5. The learned Additional Public Prosecutor, on instructions, submitted that charge sheet has been filed in Special S.C.No.87 of 2022 on the file of the POC SO Court, Tirunelveli, and it was posted on 13.10.2022 for the appearance of the accused.

6. The Detention Order in question was passed on 16.02.2022. The petitioner made a representation dated 02.03.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.03.2022. The remarks were duly received on 12.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.05.2022.

7. It is the contention of the petitioner that there was a delay of 65 days in submitting the remarks by the Detaining Authority, of which 22 days were Government holidays and hence, there was an inordinate delay of 43 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 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 43 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.18/2022 dated 16.02.2022 passed by the second respondent is set aside. The detenu, viz., Mayandi, aged about 54 years, S/o.Pandarathevar, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/10/2022

Sub Assistant Registrar(CS)

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To

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

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SI(03.10.2022) 3P 5C

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