



HCP(MD)No.530 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.09.2022

CORAM

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

H.C.P.(MD)No.530 of 2022

Keerthana

... Petitioner /Wife of the Detenue

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
St.George Fort,
Chennai - 9.

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

3.The Superintendent of Prison,
Karur District, Karur.

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

5.The Inspector of Police,
Vengamedu Police Station,
Karur District.

...Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the order of detention passed by the second respondent vide his proceedings in Cr.M.P.No.09 of 2022 dated 04.03.2022 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband, Sabariharan, S/o.Baskar, Male, aged 25 years, before this Court and set him at liberty from the detention at Central Prison, Trichy.

For Petitioner : Mr.S.M.Anantha Murugan

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., Sabariharan, S/o.Baskar, aged 25 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.09 of 2022 dated 04.03.2022 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 counsel appearing for the petitioner submitted that the detaining authority had relied upon the order passed in CrI.M.P.(MD)No. 1681 of 2020, dated 26.08.2020 to come to a conclusion that bail has been granted in a similar case and therefore, there is a likelihood of the detenu being granted bail. According to the learned counsel appearing for the petitioner, the case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu



HCP(MD)No.530 of 2022

being released on bail, is not a similar case and that was the case, where the accused therein had suffered incarceration for nearly 79 days.

5.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.

6.The Detention Order in question was passed on 04.03.2022. The petitioner made a representation. The remarks were called for by the Government from the Detaining Authority on 19.04.2022. The remarks were duly received on 26.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 05.05.2022.



HCP(MD)No.530 of 2022

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7.It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 4 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 26.04.2022 and there was a delay of 6 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, 3 days were Government Holidays and hence, there was inordinate delay of 3 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



HCP(MD)No.530 of 2022

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 4 days in submitting the remarks by the Detaining Authority and unexplained delay of 3 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.It is seen that it is the case that was taken into consideration by the detaining authority where the accused therein had suffered incarceration nearly 79 days and the final report was not filed. That was the ground on which, bail was granted. However, in the present case, the bail petition filed by the detenu was dismissed and the detenu had suffered only nearly 32



HCP(MD)No.530 of 2022

days. Therefore, the order that was relied upon by the detaining authority cannot be considered to be a similar case and it clearly reflects non-application of mind. Hence, the impugned detention order is, liable to be quashed on this ground also.

13.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.09 of 2022 dated 04.03.2022 passed by the second respondent is set aside. The detenu, viz., Sabariharan, S/o.Baskar, aged 25 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.)
30.09.2022

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Internet : Yes
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and

N. ANAND VENKATESH,J.

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

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