



HCP(MD)No.578 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.08.2022

CORAM

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

H.C.P.(MD)No.578 of 2022

Kalavathi

... Petitioner/ mother of
the detenu

Vs

- 1.The Additional Principal Secretary to
Government of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.
- 2.The District Collector cum District Magistrate
Madurai, Madurai District
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Deputy Superintendent of Police,
Oomachikulam Sub Division, Madurai.
- 5.The Inspector of Police,
Silaiman Police Station,
Madurai District

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the detention



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order in Detention Order BCDFGISSSV.No.26/2021 dated 08.12.2021 passed by the 2nd respondent and set aside the same by setting detenu namely Bhuvaneshwaran, S/o.Vadivel aged about 30 years and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : MrV.K.Kishok Kumar

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.HEMALATHA, J.**]

The petitioner is the mother of the detenu viz., Bhuvaneshwaran, aged about 30 years, S/o.Vadivel. The detenu has been detained by the second respondent by his order in Detention Order No.26/BCDFGISSSV/2021 dated 08.12.2021 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 Detention Order in question was passed on 19.11.2021. The petitioner made a representation dated 31.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 04.1.2022.



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The remarks were duly received on 09.02.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.06.2022.

6. It is the contention of the petitioner that there was a delay of 24 days in submitting the remarks by the Detaining Authority, out of which, there were 13 days Government holidays and hence there was an inordinate delay 11 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 08.02.2022 and there was a delay of 156 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, there were 50 days Government holidays and hence, there was inordinate delay of 106 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 their rigour cannot be allowed to be diluted on the basis of the nature of the



alleged activities undertaken by the detenu.

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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 13 days in submitting the remarks by the Detaining Authority and unexplained delay of 106 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.



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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.26/BCDFGISSSV/2021 dated 08.12.2021 passed by the second respondent is set aside. The detenu, viz., Bhuvaneshwaran, S/o.Vadivel, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(P.N.P.,J.) (R.H.,J.)
30.08.2022

Internet : Yes

RR

To

- 1.The Additional Principal Secretary
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.
- 2.The District Collector cum District Magistrate
Madurai, Madurai District
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Deputy Superintendent of Police,
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- 5.The Inspector of Police,
Silaiman Police Station, Madurai District
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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RR

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