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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.595 of 2022

Ponnarasi .. Petitioner

Vs.

1.The Principal Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Police,
Trichy City,
Trichy.

3.The Inspector of Police,
Srirangam Police Station,
Trichy City.

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

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PRAYER : 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 order of detention passed by the second respondent in his proceedings C.No. 37/Detention/C.P.O/T.C/2022 dated 23.03.2022 and quash the same as illegal and produce the detenu namely Ayyappan @ Aravindan, son of Mohan, aged about 26 years, now he is confined in Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.T.Lenin Kumar

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., Ayyappan @ Aravindan, son of Mohan, aged about 26 years. The detenu has been detained by the second respondent by his order in C.No. 37/Detention/C.P.O/T.C/2022 dated 23.03.2022 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.

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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

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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 final report was filed and it was taken on file by the Principal District Judge, Trichirappalli, in S.C.No.156 of 2022 and the case stands posted for hearing on 17.10.2022.

6. The Detention Order in question was passed on 23.03.2022. The petitioner made a representation dated 13.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 18.04.2022. The remarks were duly received on 25.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.05.2022.

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 Holiday and hence there was an inordinate delay of 4 days in submitting the remarks. It is the further contention of the

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petitioner that the remarks were received on 25.04.2022 and there was a delay of 4 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 no Government Holiday, hence, there was inordinate delay of 4 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

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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 8 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 C.No.37/Detention/C.P.O/T.C/2022 dated 23.03.2022 passed by the second respondent is set aside. The detenu, viz., Ayyappan @ Aravindan, son of Mohan, aged about 26 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

Index : Yes/No
Internet : Yes
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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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