



HCP(MD)No.629 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.09.2022

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

H.C.P.(MD)No.629 of 2022

R.Sumathi

.. Petitioner /Wife of the
detenu

Vs.

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

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

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 to call for the entire records connected with the



HCP(MD)No.629 of 2022

detention order passed in No.10/BCDFGISSSV/2022 dated 28.02.2022 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., Ramalingam, aged about 50 years, S/o.Otchathevar, now detained at the Central Prison, Madurai, 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., Ramalingam, aged about 50 years, S/o.Otchathevar. The detenu has been detained by the second respondent by his order in No.10/BCDFGISSSV/2022 dated 28.02.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



HCP(MD)No.629 of 2022

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 took into consideration the order passed in CrI.M.P.No. 2073 of 2021 dated 09.12.2021 to be a similar case and came to a conclusion that there is a likelihood of the detenu being granted bail. The learned counsel further submitted that the order that was referred was not a similar case and the order, which has been referred pertains to one of the adverse case in Crime No.919 of 2021, wherein the sister of the detenu was



HCP(MD)No.629 of 2022

also accused, who was granted bail.

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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 28.02.2022. The petitioner made a representation dated 15.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.04.2022. The remarks were duly received on 04.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.05.2022.

7. It is the contention of the petitioner that there was a delay of 9 days in submitting the remarks by the Detaining Authority, of which 3 days were



HCP(MD)No.629 of 2022

Government holidays and hence, there was an inordinate delay of 6 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.



HCP(MD)No.629 of 2022

11. Insofar as Crime No.919 of 2021, wherein the detaining authority took into consideration the bail order granted in CrI.M.P.No.2073 of 2021, dated 09.12.2021, it pertains to the sister of the detenu, wherein bail was granted on the ground that there is no previous case and she has already suffered sufficient incarceration. Crime No.919 of 2021 is one of the adverse case put against the detenu and in that case, anticipatory bail petition filed by the detenu was dismissed by this Court in CrI.O.P(MD)No. 17918 of 2021 through order dated 17.11.2021. Hence, the order passed in CrI.M.P.No.2073 of 2021 cannot be taken to be a similar one, more particularly, when bail was granted in one of the adverse case to the sister of the detenu. It clearly reflects non-application of mind.

12. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.10/BCDFGISSSV/2022 dated 28.02.2022 passed by the second respondent is set aside. The detenu, viz., Ramalingam, aged about 50



HCP(MD)No.629 of 2022

years, S/o.Otchathevar, 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.)
23.09.2022

Index : Yes/No

Internet : Yes

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To

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

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

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

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



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