

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.10.2022**

CORAM

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

H.C.P.(MD)No.636 of 2022

Krishnan

... Petitioner /Husband of the Detenue

Vs.

- 1.The State of Tamil Nadu,
Rep by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Inspector of Police,
Ambasamuthiram Police Station,
Tirunelveli District.
- 4.The Superintendent of Prison,
Women Central Prison,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, calling for the entire records relating to the

detention order passed by the 2nd respondent in Detention Order M.H.S.Confdl.No.36/2022 dated 11.04.2022 and quash the same and direct the respondents to produce the detenu Tmt.Ramalakshmi, W/o.Krishnan, Female, aged about 50 years, who is detained at Women Central Prison, Madurai, before this Court and set her at liberty.

For Petitioner : Mr.R.Mariappan
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the husband of the detenu viz., Ramalakshmi, aged about 50 years, W/o.Krishnan. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.36/2022 dated 11.04.2022 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.

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.Apart from the ground of delay, the learned counsel for the petitioner also attacked the detention order on the ground that the bail order that was taken into consideration by the detaining authority does not pertain to a similar case and hence, the order suffers from non application of mind.

5.Insofar as the second ground that was urged by the learned counsel for the petitioner, we find that the detaining authority had taken note of the fact that the bail petition was yet to be taken up by the Court on merits. Thereafter, the detaining authority, took into consideration the bail order that was passed in Cr.M.P.No.1971 of 2021.

6.The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition and submitted 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.

7.The Detention Order in question was passed on 11.04.2022. The petitioner made a representation on Nil. The representation was received on 26.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 26.04.2022. The remarks were duly received on 09.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.05.2022.

8.It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 5 days were Government holidays and hence there was an inordinate delay of 7 days in submitting the remarks. It is the further contention of the petitioner

that 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, 2 days were Government Holidays and hence, there was inordinate delay of 2 days in considering the representation.

9.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.

10.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.

11.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.

12.In the subject case, admittedly, there is an inordinate and unexplained delay of 7 days in submitting the remarks by the Detaining Authority and unexplained delay of 2 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department.

13.On carefully going through the order, we find that the bail was granted to the accused person in the said case, considering the long incarceration and the quantity involved. This order cannot be considered to be a similar case and the same reflects non application of mind on the part of the detaining authority. The impugned detention order is, therefore, liable to be quashed.

14.In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.36/2022 dated 11.04.2022 passed by the

second respondent is set aside. The detenu, viz., Ramalakshmi, aged about 50 years, W/o.Krishnan, is directed to be released forthwith unless her detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
14.10.2022

Index: Yes/No

Internet: Yes/No

Ns/Ta

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
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- 2.The District Collector and District Magistrate,
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- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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