



HCP(MD)No.684 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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.684 of 2022

S.Ramya

.. Petitioner /Wife of the detenu

Vs.

1.The State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records relating to the detention order passed by the 2nd respondent in H.S(M)Confdl.No.58/2022 dated 05.04.2022 and quash the same and direct the respondents to produce the detenu Thiru.Manikandan, S/o.Rajaram, Male, aged 26, who is detained at



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Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner :Mr.R.Pon Karthikeyan
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., Manikandan, aged about 26 years, S/o.Rajaram. The detenu has been detained by the second respondent by his order in H.S(M)Confdl.No.58/2022 dated 05.04.2022 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



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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 05.04.2022. The petitioner made a representation dated 26.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.04.2022. The remarks were duly received on 10.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.05.2022.



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6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 5 days were Government holidays and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 10.05.2022 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, 2 days were a Government Holiday and hence, there was inordinate delay of 2 days in considering the representation.

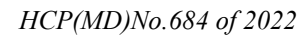
7. The second ground that was urged by the learned counsel for the petitioner is that the detaining authority after taking note of the fact that no bail petition was pending as on the date of passing of the detention order, took into consideration the order passed in CrI.O.P(md)No.23893 of 2016 and came to a conclusion that there is a likelihood of the detenu coming out on bail. The learned counsel for the petitioner submitted that the order that was relied upon by the detaining authority was not pertain to a similar case.



8. Insofar as the second ground that was urged by the learned counsel for the petitioner, we find that the bail was granted in Crl.O.P(md)No.23893 of 2016 after taking into consideration the fact that the investigation was completed and final report was taken on file by the learned Judicial Magistrate. This order cannot be considered to be a similar case and the reason assigned by the detaining authority to satisfy himself that the detenu is likelihood of coming out on bail, suffers from non application of mind.

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.



12. In the subject case, admittedly, there is an inordinate and unexplained delay of 5 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. 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 H.S(M)Confdl.No.58/2022 dated 05.04.2022 passed by the second respondent is set aside. The detenu, viz., Manikandan, aged about 26 years, S/o.Rajaram, is directed to be released forthwith unless his detention is required in connection with any other case.

<https://www.mhc.tn.gov.in/judis>



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