



H.C.P.(MD)No.713 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.713 of 2022

P.Deepa

.. Petitioner

Vs.

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

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

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

.. 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 entire records connected with the detention order of the respondent No.2 in Detention Order No.29/2022, dated 09.04.2022 and quash the same and direct the respondents to produce the petitioner's husband's body or person by name Jothi Murugan, son of Palanisamy, aged about 46 years, detained as “Goonda” and lodged in Madurai Central Prison before this Court and set him at liberty.

For Petitioner : Mr.N.Ananthapadmanabhan
for M/s.APN Law Associates
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the wife of the detenu viz., Jothi Murugan, son of Palanisamy, aged about 46 years. The detenu has been detained by the second respondent by his order in Detention Order No.29/2022, dated 09.04.2022, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 there are two adverse cases and one ground case against the detenu and in all the three cases, the investigation was completed and final report was filed. Insofar as the ground case is concerned, the same is pending before the Special Mahila Court, Dindigul in Spl.S.C.No.4 of 2022 and it is in the stage of examination of witnesses. Insofar as the second adverse case is concerned, the same is pending on the file of the Special Mahila Court, Dindigul, in Spl.S.C.No.3 of 2022 and that this case also at the stage of trial. The first adverse case is now pending before the Additional Mahila Court, Dindigul, in C.C.No.708 of 2021 and even in this case, it is a case of pending trial.

6. The Detention Order in question was passed on 09.04.2022. The petitioner made a representation dated 20.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on



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22.04.2022. The remarks were duly received on 16.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 24.05.2022.

7. It is the contention of the petitioner that there was a delay of 23 days in submitting the remarks by the Detaining Authority, of which 7 days were Government holidays and hence there was an inordinate delay of 16 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 16.05.2022 and there was a delay of 5 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 3 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



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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.

11. In the subject case, admittedly, there is an inordinate and

unexplained delay of 16 days in submitting the remarks by the Detaining Authority and unexplained delay of 3 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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12. In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.29/2022, dated 09.04.2022 passed by the second respondent is set aside. The detenu, viz., Jothi Murugan, son of Palanisamy, aged about 46 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R., J.) (N.A.V., J.)

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Index : Yes/No
Internet : Yes
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