



HCP(MD)No.839 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.11.2022

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.839 of 2022

A.Mariammal

.. Petitioner /wife of
the detenu

Vs.

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

2.The District Collector and District Magistrate
Tirunelveli District
Tirunelveli.

3.The Superintendent of Prison
Central Prison, Palayamkottai
Tirunelveli

.. Respondents

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 impugned detention order passed by the 2nd respondent made in his proceedings in MHS Confdl. Detention Order No.55/2022 dated 04.05.2022 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda



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and quash the same and direct the respondents to produce the detenu namely M.Arumugam @ Padaiyappa, S/o.Muthusamy @ Muthiah Konar, Male, aged 40 years who is detained in Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty.

For Petitioner : Mr.KA.Ramakrishnan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., M.Arumugam @ Padaiyappa aged about 40 years, S/o.Muthusamy @ Muthiah Konar. The detenu has been detained by the second respondent by his order in MHS Confdl. Detention Order No.55/2022 dated 04.05.2022 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



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have also perused the records produced by the Detaining Authority.

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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 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 04.05.2022. The



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petitioner made a representation dated 14.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.06.2022.

6. It is the contention of the petitioner that the remarks were received and there was a delay of 15 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, 3 days were a Government Holiday and hence, there was inordinate delay of 12 days in considering the representation.

7. 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.

8. In **Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145)**, a Division Bench of this Court has held that the unexplained



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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.

9. 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.

10. The learned Additional Public Prosecutor would submit that charge sheet has been filed on time, ie., on 09.05.2022 and it was taken on file in S.C.No.250/2022 on the file of the Mahila Court, Tirunelveli, and the next date of hearing is 20.01.2023.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 12 days in submitting the remarks by the Detaining Authority. 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 MHS Confdl. Detention Order No.55/2022 dated 04.05.2022



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passed by the second respondent is set aside. The detenu, viz.,
M.Arumugam @ Padaiyappa, S/o.Muthusamy @ Muthiah Konar aged
about 40 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.)
28.11.2022

Index : Yes/No

Internet : Yes

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To

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Home, Prohibition and Excise Department,
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2.The District Collector and District Magistrate
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3.The Superintendent of Prison
Central Prison, Palayamkottai
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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