



HCP(MD)No.873 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.10.2022

CORAM

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

H.C.P.(MD)No.873 of 2022

M.Esakkiyammal

... Petitioner / Mother of the Detenu

Vs.

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

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in H.S.(M)Confdl.No.82 of 2022, dated 27.04.2022 on the file of the second respondent herein and quash the same



HCP(MD)No.873 of 2022

and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Suryadinesh aged about 24 years, S/o.Murugan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Suryadinesh, aged about 24 years, S/o.Murugan. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl. No.82/2022, dated 27.04.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of the 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. The second ground that was urged by the learned counsel for the petitioner is that the detaining authority, after noting the fact that the bail petition filed by the detenu was dismissed, took into consideration the order passed by this Court in Crl.O.P.(MD)No.23893 of 2016 and came to the conclusion that it is a similar case and there is a likelihood of the detenu coming out bail. The learned counsel for the petitioner submitted that the bail order that was relied upon by the detaining authority cannot be



considered to be a similar case and the detention order suffers from non application of mind.

5.The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition. 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 learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed and it was taken on file by the II Additional District Court, Thoothukudi, in S.C.No.53 of 2022. It was further submitted that the case stands posted for appearance of accused persons on 08.11.2022.

7. The Detention Order in question was passed on 27.04.2022. The petitioner made a representation dated 24.05.2022. Thereafter, the



HCP(MD)No.873 of 2022

Government considered the matter and passed the order rejecting the petitioner's representation on 06.06.2022.

8.It is the contention of the petitioner that there was a delay of 4 days in submitting the file by the Detaining Authority, of which 2 days were Government holiday and hence there was an inordinate delay of 2 days in submitting the file. It is the further contention of the petitioner that the file was submitted on 01.06.2022 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 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.



WEB COURT

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 2 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. Insofar as the second ground that was urged by the learned counsel for the petitioner, We have carefully gone through the order passed in Cr.O.P.(MD)No.23893 of 2016. That was the case, where the



HCP(MD)No.873 of 2022

investigation was completed and final report was filed and it was also taken on file by the concerned Court. That apart, this Court also took into consideration the long incarceration suffered by the accused persons therein. Hence, the facts involved in Crl.O.P.(MD)No.23893 of 2016 cannot be considered to be a similar case. Hence, the detention order suffers from non application of mind.

14.In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl. No.82/2022, dated 27.04.2022, passed by the second respondent is set aside. The detenu, viz., Suryadinesh, aged about 24 years, S/o.Murugan, 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.)
28.10.2022

Index : Yes/No
Internet : Yes
ta



WEB COPY



HCP(MD)No.873 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

ta

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD)No.873 of 2022

28.10.2022