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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.951 of 2021

S.Mahalakshmi

... Petitioner/
Wife of the detenu

Vs.

1.The Additional Chief Secretary to Government,
Government of Tamil Nadu Home,
Prohibition and Excise IX,
Secretariat, Geroge Fort,
Chennai - 600 009.

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records on the file of the 2nd respondent in M.H.S.Confdl No.:32/2021 and set aside the order of detention passed therein dated 27.05.2021; direct the respondents to produce the detenu by name Suresh Kannan, Son of Subbaiah Thevar, male aged 34 years before this Hon'ble Court now detained at Central Prison, Coimbatore and set his at liberty.

For Petitioner : Mr.J.William Christopher

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The petitioner is the wife of the detenu, namely, Suresh Kannan S/o.Subbaiah Thevar, aged about 34 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl No:32/2021 dated 27.05.2021, 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 for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We 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 representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay with regard to the same.

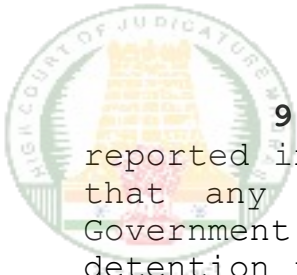
4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been 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.

5. The Detention Order in question was passed on 27.05.2021. The petitioner made a representation dated 28.06.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.07.2021. The remarks were duly received on 06.08.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.08.2021.

6. It is the contention of the petitioner that there was a delay of 44 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 7 days in considering the representation.

7. In **Rekha vs. State of Tamil Nadu**, reported in **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**, reported in **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.



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.

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10. In the subject case, admittedly, there is an unexplained delay of 51 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl No:32/2021 dated 27.05.2021, passed by the second respondent is set aside. The detenu, namely, Suresh Kannan S/o.Subbaiah Thevar, aged about 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Vsm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional Chief Secretary to Government,
Government of Tamil Nadu Home,
Prohibition and Excise IX,
Secretariat, Geroge Fort,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tenkasi District, Tenkasi.
- 3.The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore..



4.The Joint Secretary to Government,
Public (Law and Order),
Fort. St.George,
Chennai-9

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

H.C.P (MD) .No. 951 of 2021

08.02.2022

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