



HCP(MD)No.964 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.10.2022

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

H.C.P.(MD)No.964 of 2022

Subahasmi

... Petitioner / Detenu

/Vs./

- 1.The Additional Chief Secretary to the Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Special Prison for Women,
Central Prison, Madurai,
Madurai District.

...Respondents

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 second respondent in detention order No.33 of



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2022 dated 22.04.2022 and quash the same and to direct the respondents to produce the body or person of the detenu by name Subahasmi, wife of Selvaraj, aged about 30 years, now confining as “Goonda” at Special Prison for Women, Central Prison, Madurai before this Court and set her at liberty forthwith.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Subahasmi, W/o Selvaraj, aged about 30 years. The detenu has been detained by the second respondent by his order in Detention Order No.33/2022, dated 22.04.2022, holding her 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 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 urged by the learned counsel appearing for the petitioner is that the detaining authority in spite of being aware of the fact that the bail petition filed by the detenu was dismissed, took into consideration the order passed in Cr.M.P.No.971 of 2020 and came to the conclusion that it is a similar case and there is a likelihood of the detenu coming out on bail. The learned counsel for the petitioner submitted that the order relied upon by the detaining authority is not the similar case.



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5. 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.

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 Judicial Magistrate Court, Vedasanthur, in P.R.C.No.2 of 2022. It was further submitted that the case stands posted for hearing on 01.11.2022.

7. The Detention Order in question was passed on 22.04.2022. The petitioner made a representation dated 04.06.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.06.2022.



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8. It is the contention of the petitioner that there was a delay of 3 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence, there was an inordinate delay of 1 day in submitting the remarks.

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.

11. In **Tara Chand vs. State of Rajasthan and others**, reported in **1980 (2) SCC 321**, the Honourable Supreme Court has held that any



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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 1 day in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed

13. Insofar as the second ground raised by the learned counsel appearing for the petitioner, We have carefully gone through the order passed in Cr.M.P.No.971 of 2020 and we find that, that was the case, where the accused person had already suffered incarceration for nearly 73 days and substantial investigation was also over. Taking into account the said fact, the bail was granted. The order passed in Cr.M.P.No.971 of 2020 cannot be considered to be a similar case to the ground case that is pending against the detaining authority. Hence, detention order suffers from non-application of mind. The impugned detention order is therefore liable to be quashed.

14. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.33 of 2022, dated 22.04.2022 passed by



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the second respondent is set aside. The detenu, viz., Subahasni, W/o.Selvaraj, aged about 30 years, is directed to be released forthwith unless her 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
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To:

- 1.The Additional Chief Secretary to the Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
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- 2.The District Collector and District Magistrate,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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