



H.C.P.(MD)No.965 of 2022

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.965 of 2022

S.Mahalakshmi

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Principal Secretary to Government,
Home, Prohibition and Excise IV Department,
Fort St. George,
Chennai - 600 009.

2.The District Magistrate and District Collector,
Aruppukkottai District,
Aruppukkottai,
Virudhunagar District.

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

4.The Inspector of Police,
AWPS Aruppukkottai,
Virudhunagar District.

.. Respondents



H.C.P.(MD)No.965 of 2022

WEB COPY

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the detention order passed by the second respondent in detention order in Cr.M.P. No.5/2022, dated 28.03.2022 and to quash the same and direct the respondents to produce the body or person of the detenu, S.Sekaran, son of Seemali, aged about 52 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.M.Jothiramalingam

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., S.Sekaran, son of Seemalli, aged about 52 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.5/2022, dated 28.03.2022, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of



H.C.P.(MD)No.965 of 2022

WEB COPY

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 learned counsel for the petitioner submitted that the detaining authority was aware of the fact that the detenu did not file any bail



H.C.P.(MD)No.965 of 2022

petition in any Court and inspite of the same, came to the conclusion that there is a likelihood of the detenu being let out on bail, by relying upon an order passed in Crl.M.P.No.119 of 2020. The learned counsel submitted that this order was not even annexed in the booklet that was given to the detenu. The learned counsel further submitted that it is clearly a non-application of mind on the part of the detaining authority to come to a subjective satisfaction.

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 case is now pending before the POCSO Court,



H.C.P.(MD)No.965 of 2022

Srivilliputhur, in Spl.S.C.No.61 of 2022 and the examination of witness has been completed and it is now at the stage of considering the recall petition filed by the detenu to recall P.W.1, P.W.6 and the Investigation Officer.

7. We have carefully considered the submissions made on either side and also materials available on record.

8. The Detention Order in question was passed on 28.03.2022. The petitioner made a representation dated 23.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.04.2022. The remarks were duly received on 09.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.05.2022.

9. It is the contention of the petitioner that there was a delay of 11 days in submitting the remarks by the Detaining Authority, of which 5 days were Government holidays and hence, there was an inordinate delay of 6 days in submitting the remarks. It is the further contention of the



H.C.P.(MD)No.965 of 2022

petitioner that the remarks were received on 09.05.2022 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.

10. 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.

11. 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.



H.C.P.(MD)No.965 of 2022

WEB COPY

14. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.5/2022, dated 28.03.2022, passed by the second respondent is set aside. The detenu, viz., S.Sekaran, son of Seemalli, aged about 52 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.)
18.11.2022

Index : Yes/No
Internet : Yes
rm



H.C.P.(MD)No.965 of 2022

Copy to

WEB COPY

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise IV Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Aruppukkottai District,
Aruppukkottai,
Virudhunagar District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Inspector of Police,
AWPS Aruppukkottai,
Virudhunagar District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD)No.965 of 2022

M.S.RAMESH,J.

and

N.ANAND VENKATESH, J.

rm

H.C.P.(MD)No.965 of 2022

18.11.2022