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H.C.P.(MD)



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2022

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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.987 of 2022

P.Chellathai ... Petitioner /Mother of the Detenue

Vs.

- 1.State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
 - 2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
 - 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 No.33/BCDFGISSSV/2022 dated 05.04.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Selvaraj, aged about 30 years, S/o.Palraj, 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., Selvaraj, S/o.Palraj, aged 30 years. The detenu has been detained by the second respondent by his order in 33/BCDFGISSSV/2022 dated 05.04.2022 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 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 appearing for the petitioner submitted that the Detaining Authority, after taking note of the fact that the bail petition filed by the detenu is pending, took into consideration the bail order that was passed in the second adverse case in Cr.M.P.No.349 of 2021 and came to a conclusion that there is a likelihood of the detenu being granted bail. The learned counsel further submitted that the bail order that was relied upon by the detaining authority was not pertained to a similar case.

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 Detention Order in question was passed on 05.04.2022. The petitioner made a representation on 25.04.2022. The file was submitted by the Detaining Authority on 18.05.2022. The remarks were duly received on 26.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the



petitioner's representation on 24.05.2022.

7.It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 3 days in submitting the remarks. It is the further contention of the petitioner that 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.

8.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.

9.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.

10.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.

11.In the subject case, admittedly, there is an inordinate and unexplained delay of 3 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.

12.We have carefully gone through the order passed in Cr.M.P.No.349 of 2021 and in the said order, the Court was inclined to grant bail mainly on the ground that the co-accused had already been released on bail and no one sustained injury in the occurrence and the long incarceration was also taking into account. These factors make it clear that the bail order that was relied upon by the Detaining Authority was not a similar case and hence, the detention order suffers from non application of mind. The impugned detention order is, therefore, liable to be quashed.

13.In the result, the Habeas Corpus Petition is allowed and the order of detention in No.33/BCDFGISSSV/2022 dated 05.04.2022 passed by the second respondent is set aside. The detenu, viz., Selyaraj, S/o.Palraj, aged 30 years, is directed to be released



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forthwith unless his detention is required in connection
other case.

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Sd/-

Assistant Registrar (CS-III)

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/11/2022

Sub Assistant Registrar (CS)

Ns/Ta

To:

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
2. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort. St. George,
Chennai -600009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No. 987 of 2022

14.10.2022

AMS (31.10.2022) 4P 6C