



H.C.P.(MD)No.1013 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

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B.Shanthi

.. Petitioner

Vs.

1.State of Tamil Nadu,
rep. by its Principal Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai - 600 009.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent,
Central Prison,
Madurai.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records pertaining to the proceedings of the second respondent made in his proceedings in detention order No.18/BCDFGISSSV/2022, dated 04.05.2022 and quash the same and set the petitioner's son by name Nagaraj @ Ajith Nagaraj, son of Subramani, aged about 24 years, at liberty from the third respondent.

For Petitioner : Mr.C.Prithviraj

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 mother of the detenu viz., Nagaraj @ Ajith Nagaraj, son of Subramani, aged about 24 years. The detenu has been detained by the second respondent by his order in detention order No. 18/BCDFGISSSV/2022, dated 04.05.2022 holding him to be a "Goonda",



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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 Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that



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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 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 learned Judicial Magistrate No.V, Madurai, in C.C.No.1023 of 2022.

6. The Detention Order in question was passed on 04.05.2022. The petitioner made a representation dated 31.05.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 06.06.2022. The remarks were duly received on -Nil-. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.06.2022.



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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 there is no Government holiday and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on -Nil- 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.

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.



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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 5 days in submitting the remarks by the Detaining Authority and unexplained delay of 3 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.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.18/BCDFGISSSV/2022, dated 04.05.2022 passed



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by the second respondent is set aside. The detenu, viz., Nagaraj @ Ajith Nagaraj, son of Subramani, aged about 24 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.)

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Index : Yes/No
Internet : Yes
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- 2.The Commissioner of Police,
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- 3.The Superintendent,
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- 4.The Inspector of Police,
Tenkasi Police Station,
Tenkasi District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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