



HCP(MD)No.1020 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.10.2022

CORAM

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

H.C.P.(MD)No.1020 of 2022

Kaleeswari

... Petitioner / Wife of the Detenue

Vs.

1.The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai- 9.

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

3.The Superintendent of Central Prison,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent vide Detention order No. 35/2022, dated 22.04.2022 and quash the same and direct the respondents to produce the detenu Chelladurai, S/o.Rajendran, aged about 27 years, now detained at Central Prison, Madurai before this Court and set him at liberty.



HCP(MD)No.1020 of 2022

For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Chelladurai, S/o.Rajendran, aged 27 years. The detenu has been detained by the second respondent by his order in Detention Order No.35 of 2022, dated 22.04.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 that was urged by the learned counsel for the petitioner is that the detaining authority has relied upon the order passed in CrI.M.P.No.311 of 2020 and has come to the conclusion that there is a likelihood of the detenu being let out on bail. The learned counsel for the petitioner submitted that the said order is completely illegible. Hence, the learned counsel for the petitioner relied upon the latest judgment of the Hon'ble Apex Court in the case of *The State of Manipur Vs. Buyamayum Abdul Hanan @ Anand in CrI.A.No.1819 of 2022* and submitted that such illegible copy of documents prevents the detenu from making an effective representation, which is violative of Article 22(5) of the Constitution of India.

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



HCP(MD)No.1020 of 2022

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 22.04.2022. The petitioner made a representation dated 07.06.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.06.2022.

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.

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



HCP(MD)No.1020 of 2022

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. The impugned detention order is, therefore, liable to be quashed.

12.Insofar as the second ground that was urged by the learned counsel for the petitioner, We have carefully considered the submissions of the



HCP(MD)No.1020 of 2022

learned counsel for the petitioner. The bail order that was relied upon by the detaining authority is available at Page Nos.68 and 69 of the documents book and it is completely illegible. Hence, as rightly contended by the learned counsel for the petitioner, this supply of illegible documents, which was relied upon by the detaining authority prevents the detenu from making an effective representation and the same is violative of the Article 22(5) of the Constitution of India. This issue is covered by the judgment that was relied upon by the learned counsel for the petitioner. In view of the same, the detention order is illegal and liable to be interfered with.

13.In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.35 of 2022, dated 22.04.2022 passed by the second respondent is set aside. The detenu, viz., Chelladurai, S/o.Rajendran, aged 27 years, is directed to be released forthwith unless his 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
ta



HCP(MD)No.1020 of 2022

To:
WEB COPY

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai- 9.
- 2.The District Collector and District Magistrate,
Dindigul District.
- 3.The Superintendent of Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



HCP(MD)No.1020 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

ta

H.C.P.(MD)No.1020 of 2022

28.10.2022