



H.C.P.(MD)No.1037 of 2022

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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.1037 of 2022

Seethalakshmi

.. Petitioner

Vs.

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

2.The District Magistrate and District Collector,
O/o. The District Magistrate and District Collector,
Virudhunagar District
Virudhunagar.

3.The Superintendent of Prison,
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 detention order passed by the second respondent in detention order in Cr.M.P.No.08/2022 (Sexual Offender) dated 14.04.2022 and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely, Ponpandi @ Packiyaraj, son of Chelladurai, aged about 39 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.P.Muthusamy

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., Ponpandi @ Packiyaraj, son of Chelladurai, aged about 39 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.8/2022, dated 14.04.2022, holding him to be a "Sexual Offender", as contemplated under



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



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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 investigation was completed and the final report was filed



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and it was taken on file by the POCSO Court, Srivilliputhur, in Spl.S.C.No.55 of 2022. It was further submitted that the trial is over and the case is now at the stage of questioning the accused person under Section 313(1)(b) of Cr.P.C. and it is posted on 22.11.2022.

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 14.04.2022. The petitioner made a representation dated 09.05.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.05.2022. The remarks were duly received on -Nil-. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 24.05.2022.

9. It is the contention of the petitioner that there was a delay of 4 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence, there was an inordinate delay of



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2 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.

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.



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12. 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.

13. In the subject case, admittedly, there is an inordinate and unexplained delay of 2 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. Insofar as the second ground that was raised by the learned counsel for the petitioner, it is seen that the detaining authority has relied upon an order passed in Crl.M.P.No.119 of 2020 and come to a conclusion that there is a likelihood of the detenu coming out on bail. However the said order has not been furnished to the detenu and hence, the detenu has been deprived of an opportunity to make an effective representation in this case. This is yet another ground, on which, the impugned detention order is, therefore, liable to be quashed.



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14. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.8/2022, dated 14.04.2022, passed by the second respondent is set aside. The detenu, viz., Ponpandi @ Packiyaraj, son of Chelladurai, aged about 39 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
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Madurai Bench of Madras High Court,
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