



H.C.P.(MD)No.1054 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1054 of 2022

Esakkiammal

.. Petitioner

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,
Tirunelveli City.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli,
Tirunelveli District.

.. 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 records pertaining to the order of detention passed in No.51/BCDFGISSSV/2022, dated 16.05.2022 by the second respondent and set aside the same and consequently directing the respondents to produce the detenu Mariappan, son of Sudalai, aged about 38 years, before this Court, who is confined in Central Prison, Palayamkottai, and set him at liberty.

For Petitioner : Mr.S.C.Herold Singh

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., Mariappan, son of Sudalai, aged about 38 years. The detenu has been detained by the second respondent by his order in No.51/BCDFGISSSV/2022, dated 16.05.2022, 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.



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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 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



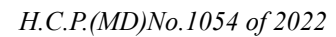
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detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 16.05.2022.

The petitioner made a representation dated 27.05.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 30.05.2022. The remarks were duly received on -Nil-. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.06.2022.

6. 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 a Government holiday and hence there was an inordinate delay of 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 7 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



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7. In **Rekha vs. State of Tamil Nadu (2011 (5) SCC 244)**, the

8. In **Sumaiya vs. The Secretary to Government (2007 (2))**

9. In **Tara Chand vs. State of Rajasthan and others**, reported



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10. 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 5 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.51/BCDFGISSSV/2022, dated 16.05.2022, passed by the second respondent is set aside. The detenu, viz., Mariappan, son of Sudalai, aged about 38 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.)

01.12.2022

Index : Yes/No
Internet : Yes
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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