



H.C.P.(MD)No.1311 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.1311 of 2022

M.Jeyarani

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
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 records relating to the impugned detention order passed by the second respondent in Cr.M.P.No. 9/2022, dated 14.04.2022, quash the same and direct the respondents to produce the detenu namely, M.Hariharan @ Saravanan, son of Mahendran, aged about 28 years, now detained at Madurai Central Prison before this Court and set him at liberty.

For Petitioner : Mr.M.Michael Bharathi

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., M.Hariharan @ Saravanan, son of Mahendran, aged about 28 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.09/2022, dated 14.04.2022, 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.



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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 learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed before the Special Court for SC and ST Act cases, Srivilliputhur, Virudhunagar District in Spl.S.C.No.9 of 2022 and the victim girl has been examined as L.W.1 and she was also cross examined by A2 and A3. The case is now posted for examination of other witnesses on 22.11.2022.

6. The Detention Order in question was passed on 14.04.2022. The petitioner made a representation dated 25.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.04.2022. The remarks were duly received on Nil. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.06.2022.



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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 23 days in submitting the remarks by the Detaining Authority and there was no delay 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.



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12. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.09/2022, dated 14.04.2022 passed by the second respondent is set aside. The detenu, viz., M.Hariharan @ Saravanan, son of Mahendran, aged about 28 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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