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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.04.2022
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
H.C.P.(MD) No.1621 of 2021

Gnanabai Thangaswamy ... Petitioner / Mother of the Detenu

Vs.

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

2.The District Collector and District Magistrate,
Nagercoil, Kanyakumari District-629 001.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Thirunalveli District-627 002. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the second respondent in P.D.No.26/2021, dated 23.08.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name T.Backeswaran @ Packiyeswaran, S/o.Thangaswamy, aged about 21 years, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.G.Anto Prince

For Respondents : Mr.S.Ravi,
Additional Public Prosecutor.

ORDER

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The petitioner is the mother of the detenu, namely, T.Backeswaran @ Packiyeswaran, S/o.Thangaswamy, aged about 21 years. The detenu has been detained by the second respondent by his proceedings in P.D.No.26/2021, dated 23.08.2021 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 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 representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay with regard to the same.

4.The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. 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.

5.The Detention Order in question was passed on 23.08.2021. The petitioner made a representation dated 30.09.2021 and the same was received on 11.10.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.10.2021 and remarks were received on 18.11.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.11.2021. Though the representation dated 30.09.2021 was received on 11.10.2021, it was rejected only on 30.11.2021 with the delay of 32 days, after excluding the Government Holidays of 18 days. The delay in considering the representation remains unexplained.

6.In **Rekha vs. State of Tamil Nadu**, reported in **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.

7.In **Sumaiya vs. The Secretary to Government**, reported in **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.

8.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.

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9.In the subject case, admittedly, there is an unexplained delay of 32 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

10.In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.26/2021, dated 23.08.2021 passed by the second respondent is set aside. The detenu, namely, T.Backeswaran @ Packiyeswaran, S/o.Thangaswamy, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

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

2.The District Collector and District Magistrate,
Nagercoil, Kanyakumari District-629 001.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Thirunalveli District-627 002.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George, Chennai-600 009.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G. ANTOPRINCE, Advocate (SR-18540[F] dated 13/04/2022)

H.C.P.(MD)No.1621 of 2021
13.04.2022

_RD(25.04.2022) 3P 7C

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