



HCP(MD)No.1416 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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.1416 of 2022

Indira

... Petitioner / Mother of the Detenu

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The District Collector/District Magistrate,
Kanniyakumari District,
Nagercoil.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the second respondent in P.D.No.26/2022, dated 27.04.2022 and quash the same and direct the respondent to produce the petitioner's son body or person by name Krishnamoorthy @ China Kozhi



HCP(MD)No.1416 of 2022

S/o.Chockalingam aged about 26 years detained as a “Drug Offender” and lodged in Central Prison, Palayamkottai, before this Court and to set him at liberty forthwith.

For Petitioner : Mr..B.Muneeswaran

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Krishnamoorthi @ China Kozhi, aged about 26 years, S/o.Chockalingam. The detenu has been detained by the second respondent by his order in P.D.No.26/2022, dated 27.04.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) of the 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.



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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 ground case pertained to the alleged possession of 21 Kgs of Kanja by the detenu, which is commercial quantity. The detaining authority after noting the fact that no bail application has been filed by the detenu, relied upon the order passed in CrI.M.P.No.5126 of 2019 and came to the conclusion that it is a similar case, where bail was granted and there is a likelihood of the detenu coming out on bail. The learned counsel for the petitioner submitted that the order that was relied upon by the detaining authority cannot be considered to be a similar case and the detention order suffers from non application of mind.



HCP(MD)No.1416 of 2022

5. The learned Additional Public Prosecutor strongly 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.

6. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed and it was taken on file by the NDPS Court, Madurai, in C.C.No.481 of 2022 of 2022. It was further submitted that the final report was filed well within the time and even if the detention order is quashed, the detenu has to file a bail petition before the concerned Court, which has to be considered in line with Section 37 of the NDPS Act.

7. The Detention Order in question was passed on 27.04.2022. The petitioner made a representation dated 18.08.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.08.2022.



HCP(MD)No.1416 of 2022

WEB COPY

8.It is the contention of the petitioner that there was a delay of 3 days in submitting the file by the Detaining Authority, of which no day was Government holiday and hence there was an inordinate delay of 3 days in submitting the file. It is the further contention of the petitioner that the file was received on 25.08.2022 and there was a delay of 3 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 Government Holidays and hence, there was inordinate delay of 1 day in considering the representation.

9.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.

10.In **Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145)**, a Division Bench of this Court has held that the unexplained



HCP(MD)No.1416 of 2022

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.

11.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.

12. In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in submitting the remarks by the Detaining Authority and unexplained delay of 1 day 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.

13. Insofar as the second ground that was urged by the learned counsel for the petitioner, We have carefully gone through the order passed in CrI.M.P.No.5126 of 2019. In the said case, the quantity involved is 2.250 Kgs. The Court had taken into consideration the said fact and also the period of incarceration already undergone by the detenu and granted bail.



HCP(MD)No.1416 of 2022

This cannot be treated as similar case, since in the present case, it involves 21 Kgs of Kanja. Hence, the satisfaction arrived at by the detaining authority to come to the conclusion that there is a likelihood of the detenu coming out on bail suffers from non application of mind.

14.In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.26 of 2022, dated 27.04.2022, passed by the second respondent is set aside. The detenu, viz., Krishnamoorthi @ China Kozhi, aged about 26 years, S/o.Chockalingam, 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

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To:

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2.The District Collector/District Magistrate,
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3.The Superintendent of Prison,
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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