



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2022

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THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P. (MD) No.1528 of 2022

Thenmozhi ... Petitioner /Wife of the Detenue
Vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Maruthupandiyar Nagar,
Sivagangai District.
- 3.The Inspector of Police,
Somanthapuram Police Station,
Sivagangai District.
(Crime No.1 of 2022)
- 4.The Superintendent of Prison,
Central Prison,
Madurai.

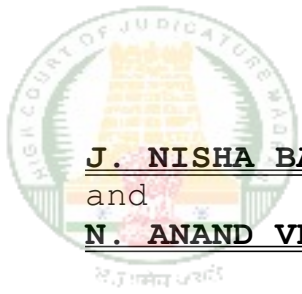
...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondents to produce the person or body of the detenue namely, Sundarapandian aged about 44/2022 years son of Posallan before this Court who is now detained in the Central Prison, Madurai in pursuant to the detention order passed by the second respondent in Cr.M.P.No.10/Goonda/2022 dated 01.02.2022 and to call of the records and quash the same and set the detenue at liberty forthwith.

For Petitioner : Mr.K.N.Guru

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER



J. NISHA BANU, J.

and

N. ANAND VENKATESH, J.

The petitioner is the wife of the detenu viz., Sundarapandian, aged about 44 years, S/o.Posalan. The detenu has been detained by the second respondent by his order in Cr.M.P.No.10/Goonda/2022 dated 01.02.2022 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.

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 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 01.02.2022. The petitioner made a representation dated Nil. The remarks were called for by the Government from the Detaining Authority on 18.03.2022. The remarks were duly received on 25.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.05.2022.

6.It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 4 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 25.03.2022 and there was a delay of 58 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, 21 days were Government Holidays



and hence, there was inordinate delay of 37 days in considering the representation.

7. 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.

8. 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.

9. 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 4 days in submitting the remarks by the Detaining Authority and unexplained delay of 37 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 Cr.M.P.No.10/Goonda/2022 dated 01.02.2022 passed by the second respondent is set aside. The detenu, viz., Sundarapandian, aged about 44 years, S/o.Posalan, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/11/2022

Sub Assistant Registrar (CS)

ta/Ns

To:

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai-600 009.

<https://www.mhc.tn.gov.in/judis>



2.The District Collector and District Magistrate,
Maruthupandiyar Nagar,
Sivagangai District.

3.The Inspector of Police,
Somanthapuram Police Station,
Sivagangai District.
(Crime No.1 of 2022)

4.The Superintendent of Prison,
Central Prison,
Madurai.

5. The Joint Secretary to Government,
Public (Law & Order),
Fort. St.George,
Chennai -600009.

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

H.C.P.(MD)No.1528 of 2022

14.10.2022

AMS (31.10.2022) 4P 7C