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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.[MD]No.1760 of 2021

Hemalatha

.. Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Tuticorin,
Tuticorin.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in pursuant to the proceedings of the second respondent in Detention Order in H.S.(M)Confdl No.165/2021 dated 30.10.2021 quash the same and consequently direct the respondents to produce the detenu, namely Arivalagan, S/o. Sakkarai Nadar aged 46 years who is now detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.M.Anantha Devi

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

[Order of the Court was made by **P.N.PRAKASH, J.**]

The petitioner is the wife of the detenu viz., Arivazhahan, S/o.Sarkarai Nadar, aged about 46 years. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl No.165/2021 dated 30.10.2021, holding him to be a "Drug Offender", as contemplated under Section 2(e) 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.

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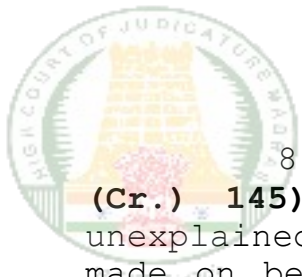
3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The 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 30.10.2021. The petitioner made a representation on 18.11.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.11.2021. The remarks were duly received on 06.12.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.01.2022.

6. It is the contention of the petitioner that there was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holiday and hence there was an inordinate delay of 10 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 06.12.2021 and there was a delay of 27 day in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 9 days were Government Holidays, hence, there was inordinate delay of 18 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 10 days in submitting the remarks by the Detaining Authority and unexplained delay of 18 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 H.S.(M)Confdl No.165/2021 dated 30.10.2021, passed by the second respondent is set aside. The detenu, viz., Arivazhahan, Son of Sarkarai Nadar, aged about 46 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

RM

To

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

2.The District Collector and District Magistrate,
Tuticorin,
Tuticorin.

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

<https://hcservices.ecourts.gov.in/hcservices/>



4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai

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

H.C.P. [MD]No.1760 of 2021
20.06.2022

nsn(CO)
TR(24.06.2022) 4P 6C