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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.(MD) No.1802 of 2021

T.Jai Sangeeth ... Petitioner

-vs-

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

2.The District Collector and District Magistratrate
Theni District
Theni

3.The Inspector of Police
Uthamapalayam Police Station
Theni District

4.The Superintendent
Special Prison for Women
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 entire records in detention order No. 44/2021, dated 25.10.2021, on the file of the second respondent and quash the same and direct the respondents herein to produce the body of the petitioner's mother Mailammal, aged about 65 years, wife of Thangarasu, now confined in Special Prison for Women, Madurai., before this Court and set her at liberty forthwith.

For Petitioner : Mr.Kannan.R.

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

O R D E R

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

The petitioner is the son of the detenue viz., Mailammal, aged about 65 years, wife of Thangarasu. The detenue has been detained by the second respondent by his order No.44/2021, dated 25.10.2021, holding her 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 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 a 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 detenue and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

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5. The detention order in question was passed on 25.10.2021. The petitioner made a representation on 08.11.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.11.2021. The remarks were duly received on 13.12.2021 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 27 days in submitting the remarks by the Detaining Authority, of which 06 days were Government holidays and hence there was an inordinate delay of 21 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 13.12.2021 and there was a delay of 20 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 07 days were Government holidays, hence, there was inordinate delay of 13 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

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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 detenue would be sufficient to set aside the order of detention.

9. In ***Tara Chand vs. State of Rajasthan and others [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 21 days in submitting the remarks by the Detaining Authority and unexplained delay of 13 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.

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In the result, the Habeas Corpus Petition is allowed and the order of detention No.44/2021, dated 25.10.2021, passed by the second respondent is set aside. The detenue, viz., Mailammal, aged about 65 years, wife of Thangarasu, is directed to be released forthwith unless her detention is required in connection with any other case.

[P.N.P., J.] [R.H., J.]

07.07.2022

Index : Yes / No
Internet : Yes / No

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To:
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2.The District Collector and District Magistratrate,
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3.The Inspector of Police,
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4.The Superintendent,
Special Prison for Women,
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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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