



WEB COPY



HCP(MD)No.1823 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.09.2022**

CORAM

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

H.C.P.(MD)No.1823 of 2021

Saroja

... Petitioner / Mother of Detenue

/Vs./

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

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

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the impugned detention order passed by the second respondent made in his proceedings in P.D.No.130/2021 dated 07.10.2021 in detaining the detenue under Section 2(ggg) of the Tamilnadu Act 14 of 1982 as a Sexual Offender and quash the same and direct the respondents to produce Detenue namely



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Kumar @ Elamaran, S/o.Kaliyaperumal, Male, aged about 39 years, who is detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Kumar @ Elamaran, S/o.Kaliyaperumal, aged about 39 years. The detenu has been detained by the second respondent by his order in Detention Order P.D.No.130/2021 dated 07.10.2021 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 other ground raised by the learned counsel appearing for the petitioner is that the arrest intimation was not given to the near relative of the detenu. Hence, the learned counsel submitted that mandatory requirements of informing the arrest was not made to the relative of the detenu and therefore, the detention order is vitiated on that ground also.

5. 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



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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. The learned Additional Public Prosecutor would further submit that the arrest of the detenu has been intimated to the brother of the detenu through SMS.

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 Special Court for POCSO Act cases, Tanjore, in Spl.S.C.No.52 of 2022 and the same is pending.

7. We went through the arrest intimation report and we find that the arrest intimation has been sent through an SMS through one mobile number. Neither the mobile number that has been shown is belonging to the brother of the detenue, nor the signature of the brother has been obtained for having intimated the arrest. In view of the same, there is a statutory violation of passing the detention order and the same can be taken into consideration to interfere with the detention order.



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8. The Detention Order in question was passed on 07.10.2021. The petitioner made a representation dated 18.11.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 18.11.2021. The remarks were duly received on 23.11.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.12.2021.

9. It is the contention of the petitioner that the remarks were received on 23.11.2021 and there was a delay of 8 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 6 days in considering the representation.

10. 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.



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11. 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.

12. 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.

13. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 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.

14. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.130/2021 dated 07.10.2021. passed by the second respondent is set aside. The detenu, viz., Kumar @ Elamaran,



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S/o.Kaliyaperumal, aged about 39 years, 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.)

30.09.2022

Index : Yes/No

Internet : Yes

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To:

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Home, Prohibition and Excise Department,
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- 2.The District Collector and District Magistrate,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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