



WEB COPY

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.1839 of 2021

Shanmugavadivu

.. Petitioner / Mother of the Detenu

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Dindigul District,
Dindigul.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

.. 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 Detention Order No.89/2021 dated 31.10.2021 and quash the same and direct the respondents to produce the body or person of the detenu by name Dharmasastha @ Dharma, S/o.Baskaran, aged about 23 years, now detained as "Goonda" at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.HEMALATHA, J.**]

The petitioner is the mother of the detenu viz., Dharmasastha @ Dharma, S/o.Baskaran, aged about 23 years. The detenu has been detained by the second respondent by his order in D.O.No.89/2021 dated 31.10.2021, 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.

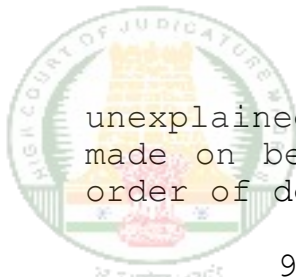
4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public 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 31.10.2021. The petitioner made a representation on 01.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 06.12.2021. The remarks were duly received on 28.12.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.04.2022.

6. It is the contention of the petitioner that there was a delay of 22 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holiday and hence there was an inordinate delay of 16 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 28.12.2022 and there was a delay of 108 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 37 days were Government Holidays, hence, there was inordinate delay of 71 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
<https://hcservices.ecourts.gov.in/hcservices/>



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 16 days in submitting the remarks by the Detaining Authority and unexplained delay of 71 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 D.O.No.89/2021 dated 31.10.2021, passed by the second respondent is set aside. The detenu, viz., Dharmasastha @ Dharma, S/o.Baskaran, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

RM

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Dindigul District,
Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.



4.The Joint Secretary to Government,
Public (Law & Order),
Fort saint George, Chennai-600 009.

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

**H.C.P. [MD]No.1839 of 2021
20.06.2022**

RD(29.06.2022) 4P 6C