



H.C.P.(MD) No.1957 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

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Rajeswari

... Petitioner

-VS-

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.



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3.The Superintendent of Prison,

Madurai Central Prison, Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the Detention order of the respondent in No.70/BCDFGISSSV/2021 dated 26.11.2021 and quash the same and direct the respondents to produce the body or person of the detenu namely Thandapani S/o.Kasi, aged 33 years now detained as “Goonda” at Central prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

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

ORDER

[Made by P.N.PRAKASH, J.]

The petitioner is the wife of the detenu viz., Thandapani, aged about 33 years, son of Kasi. The detenu has been detained by the second respondent by his order in Detention order No.70/BCDFGISSSV/2021 dated 26.11.2021, holding him to be a "Goonda", as contemplated under Section 3(1) 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 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. 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.



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5. The Detention Order in question was passed on 26.11.2021. The petitioner made a representation on 15.12.2021 along with remarks. 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 the remarks were received on 15.12.2021 and there was a delay of 17 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 7 days were Government Holidays, hence, there was inordinate delay of 10 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.



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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 considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed. That apart, the detention order of the co-accused viz., Sekar @ Rajasekar has been set aside by this Court in H.C.P(MD) No.1920 of 2021.



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11. In view of the above, the Habeas Corpus Petition is allowed and the order of detention in Detention order No.70/BCDFGISSSV/2021 dated 26.11.2021, passed by the second respondent is set aside. The detenu, viz., Thandapani, aged about 33 years, son of Kasi, is directed to be released forthwith unless his detention is required in connection with any other case.

[P.N.P., J.] [R.H., J.]
06.07.2022

Index : Yes / No
Internet : Yes / No
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To:

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Chennai – 600 009.

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