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H.C.P.(MD) No.1996 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1996 of 2021

and

Cr1.M.P (MD) No.4681 of 2022

Packiyam

... Petitioner/Wife of Detenu

Vs.

1.The Principle Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat,
Chennai-600 009.

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

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

4.The Inspector of Police,
Watrap Police Station,
Virudhunagar District.

... 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 in Detention Order passed in Cr.M.P.No.19/Goonda/2021 on the file of the Respondent No.2, dated 07.12.2021 and quash the same as illegal and direct the Respondents to produce the body or person of the petitioner's husband namely Raja @ Katta Raja, son of Loorthu, aged about 43 years, now confined at Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.S.Ravi,
Additional Public Prosecutor



O R D E R

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

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The Petitioner is the wife of the detenu, namely, Raja @ Kattaraja, Son of Loorthu, aged about 43 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.19/2021, dated 07.12.2021, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

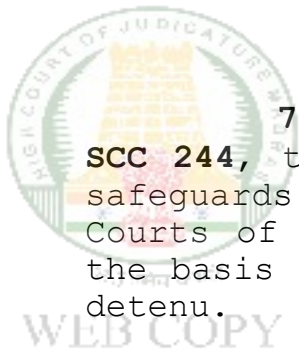
2.This Habeas Corpus Petition is taken up for out of turn, because of the medical emergency involved in the petitioner's case. This will not be a ground for quashing the detention order of other accused involved in the ground case.

3.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

4.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 representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay with regard to the same.

5.The learned Additional Public Prosecutor 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.

6.The Detention Order in question was passed on 07.12.2021. The petitioner made a representation, dated 24.12.2021 and the same was received on 28.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority dated 28.12.2021 and the remarks were received on 04.01.2022. Thereafter, the Minister has dealt with the representation on 18.04.2022. Ultimately, the petitioner's representation was rejected on 18.04.2022. Thus, there is a delay of 67 days after excluding the Government Holidays of 35 days in considering the representation which remains unexplained.



7. In ***Rekha vs. State of Tamil Nadu***, reported in 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***, reported in 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 unexplained delay of 67 days in considering the representation. 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 Cr.M.P.No.19/2021, dated 07.12.2021, passed by the second respondent is set aside. The detenu, namely, Raja @ Kattaraja, Son of Loorthu, aged about 43 years, is directed to be released forthwith unless his detention is required in connection with any other case. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D.II)

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/ /2022

Sub Assistant Registrar(CS)

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To

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Home, Prohibition and Excise (IX) Department,
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Chennai-600 009.

2.The District Magistrate and District Collector,
Virudhunagar,
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<https://hcservices.ecourts.gov.in/hcservices/>



3.The Superintendent of Prison,
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4.The Inspector fo Police,
Watrap Police Station,
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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RD(29.04.2022) 4P 6C