



H.C.P.No.683 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2023

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

H.C.P.No.683 of 2022

Thamizharasi

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Addl. Chief Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Chennai-9
- 2.The District Collector and District Magistrate,
Kanchipuram District,
Kanchipuram – 631 502
3. The Superintendent of Prison,
Central Prison, Puzhal,
Chennai 600 066.
4. The Superintendent of Police,
Kanchipuram District,
Kanchipuram 631502
5. The Inspector of Police,



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B-1, Sivakanchi Police Station,
Kanchipuram – 631 502

.. Respondents

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Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records of the second respondent dated 22.03.2022 in BCDFGISSSV No.12/2022 against the petitioner's brother Chinna @ Vinoth Kumar S/o. Babu aged about 25 years, who is confined at Central Prison, Puzhal, Chennai and setaside the same and direct the respondents to produce the detenue before this Court and set him at Liberty.

For Petitioner : Mr.Jesin Prabhu George
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the sister of the detenu, Chinna @ Vinoth Kumar S/o.Babu aged about 25 years . The detenu has been detained by the 2nd respondent by his order dated 22.03.2022 in Memo No.BCDFGISSSV No.12/2022, 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



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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 filed his counter affidavit and 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



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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 22.03.2022. The petitioner made a representation on 22.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.04.2022. The remarks were duly received on 26.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.06.2022.

6. It is the contention of the petitioner that there was a delay of 32 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holidays and hence, there was an inordinate delay of 24 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 26.05.2022 and there was a delay of 9 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy



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Secretary dealt with it, of which 2 days were Government Holidays, hence, there was inordinate delay of 7 days in considering the representation.

7. In **Rekha Vs. State of Tamil Nadu [2011 (5) SCC 244]**, the Hon'ble 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 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 Hon'ble 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.



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10. In the subject case, admittedly, there is an inordinate and unexplained delay of 24 days in submitting the remarks by the Detaining Authority and unexplained delay of 7 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.12/2022, dated 22.03.2022, passed by the 2nd respondent is set aside. The detenu viz., Chinna @ Vinoth Kumar S/o.Babu aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[P.N.P., J.] [N.A.V., J.]

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- 6.The Public Prosecutor
High Court, Madras



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AND
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