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H.C.P.No.764 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM

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

H.C.P.No.764 of 2022

S.Kalaimani

Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By the Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai – 9
2. The District Collector and District Magistrate,
Villupuram District,
Villupuram
3. The Superintendent of Police,
Villupuram District, Villupuram.
4. The Superintendent of Central Prison,
Cuddalore District, Cuddalore.
5. The Inspector of Police,
Villupuram All Women Police Station,
Villupuram District, Villupuram.

....Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a
WRIT OF HABEAS CORPUS direction to produce the body of the detenu by



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name Sasikumar aged 28 years S/o. Rajendiran presently confined at Central Prison Cuddalore before this Court and set him at liberty forthwith after calling for the records pertaining to the detention order dated 26.04.2022 made in RC.No.C2/12458/2022 on the file of the 2nd respondent.

For Petitioner : Mr.C.Munusamy
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by N.ANAND VENKATESH, J.]

The petitioner is the mother of the detainee viz., Sasikumar aged 28 years S/o. Rajendiran. The detainee has been detained by the 2nd respondent by his order dated 26.04.2022 in RC No.C2/12458/2022, 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 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.

5. The learned Additional Public Prosecutor appearing for the State submitted that the detenu was arrested on 20.03.2022 and the charge sheet was filed on 11.06.2022 in Spl.S.C.No.222 of 2022 before the Mahila Court for



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POCSO Cases, Villupuram within the time and now, the case is posted for furnishing copies to the accused on 06.01.2023.

6.The trial Judge is directed to bear in mind the mandate of Section 33 (5) of the POCSO Act and if the accused does not cross-examine the victim, he will thereafter, forfeit his right to recall the victim for cross-examination. The trial Court shall also bear in mind that the final report was filed on time and hence, the order passed in this Habeas Corpus Petition will not have any bearing and if in case, the detenue moves a bail application, the same shall be considered on its own merits and after considering the conduct of the accused.

7. The Detention Order in question was passed on 26.04.2022. The petitioner made a representation dated 04.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.05.2022.

8. It is the contention of the petitioner that there was a delay of 24 days in considering the representation by the Hon'ble Minister concerned, after the Deputy



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Secretary dealt with it, of which 8 days were Government holidays. Hence, there was inordinate delay of 16 days in considering the representation.

9. 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.

10. 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.

11. 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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12. In the subject case, admittedly, there is an inordinate and unexplained delay of 16 days in considering the representation by the Hon'ble Minister concerned. 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 RC No.C2/12458/2022 Dated 26.04.2022, passed by the 2nd respondent is set aside. The detainee viz., Sasikumar aged 28 years S/o. Rajendiran, 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.]
04.01.2023

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To

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1. The learned Mahila Court for POCSO Cases, Villupuram
Spl.S.C.No.222 of 2022
2. The State of Tamil Nadu,
Rep. By the Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai – 9
3. The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur,
Chennai – 119
4. The Superintendent of Police,
Central Prison,
Puzhal, Chennai 600 066
5. The Inspector of Police,
S-16, Perumbakkam Police Station,
Perumbakkam, Chennai
6. The Public Prosecutor
High Court, Madras



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P.N.PRAKASH, J.
AND
N. ANAND VENKATESH, J.

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