



HCP No.1216 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and

The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P. No.1216 of 2022

Bhavanya

W/o.Vikky @ Vignesh

... Petitioner (Wife of Detenu)

-VS-

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

2.The Commissioner of Police,
Greater Chennai Police Commissionerate,
The Commissioner Office,
Vepery, Chennai – 7.

3.The Superintendent of Police,
Central Prison, Puzhal,
Chennai – 66.

4.The Inspector of Police,
D3-Ice House Police Station,
Chennai.

... Respondents



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Habeas Corpus Petition filed under Article 226 of the Constitution of

WEB COURT

India, to issue a Writ of Habeas Corpus calling for the records relating to the detention order in Memo BCDF GI SSSV No.96/2022 dated 02.05.2022 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Vikky @ Vignesh, S/o.Narayanan the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Vikky @ Vignesh S/o.Narayanan aged about 22 years the detenu herein at liberty.

For Petitioner .. Mr.N.Naresh

For Respondents .. Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J.]

Captioned Habeas Corpus Petition ['HCP'] has been filed in this Court on 23.06.2022 assailing an order of detention dated 02.05.2022 bearing reference BCDFGISSSV No.96/2022 [hereinafter referred as 'impugned detention order' for the sake of convenience and clarity] made by the second



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respondent i.e. jurisdictional Commissioner of Police [hereinafter referred as 'detaining authority' for the sake of convenience and clarity]. To be noted the fourth respondent who is the jurisdictional Inspector of Police is the Sponsoring authority.

2.The petitioner is the wife of the detenu. The impugned detention order has been made by the detaining authority on the premise that the detenu is a Goonda within the meaning of Section 2(f) of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders Slum grabbers and Video Priates Act, 1982 (Tamil Nadu Act 14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience]. There are six adverse cases and one ground case in Crime No.148 of 2022 on the file of D-3 Ice House Police Station for the alleged offence under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC.

3.The contention of the learned counsel for the petitioner is that the detenu was arrested on 30.03.2022 and thereafter remanded to judicial custody but the detention order was passed only on 02.05.2022. He would



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further submit that the translation of the remand order dated 13.03.2022 which is given in page Nos.232 and 233 of the booklet was not proper which would affect the arrival of subjective satisfaction of the detaining authority. He further submitted that the similar case referred by the detaining authority is not a similar case and it pertains to co-accused/A3, wherein bail was granted to co-accused/A3 on 20.04.2022, on the other hand the detenu's bail application was dismissed on 27.04.2022 and hence, prejudice has been caused to the detenu. Added to it, a representation on behalf of the detenu was sent on 16.06.2022 which was received by the authorities on 17.06.2022 but there was a delay of nine days in considering the petitioner's representation, which is fatal. Hence, the impugned detention order is liable to be quashed.

4.The learned Additional Public Prosecutor submits that the petitioner is a known history sheeter with criminal antecedents and he has got six adverse cases against him with proximity, hence the detaining authority passed the impugned detention order considering the antecedents and the ground case. He would further submit that the error in the translation would



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not vitiate the detention order. With regard to the delay in considering the representation, the learned Additional Public Prosecutor submitted that due to intervening holidays and the procedures followed in processing the file by the authorities at various levels, delay occurred in considering the representation. Hence, he strongly opposes this petition.

5.Considering the submissions made and on perusal of the materials, it is seen that though several grounds were raised the detention order is liable to be set aside on the point of delay. In this case there is a delay of nine days in considering the representation. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the authorities, unexplained delay on the part of the authorities in considering the representation renders the detention unsustainable. The Apex Court in the case of Tara Chand vs. State of Rajasthan and others reported in 1980 [2] SCC 321, 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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6. In the result, the Habeas Corpus Petition is allowed and the detention order dated 02.05.2022 bearing reference BCDFGISSSV No.96/2022 is set aside and the detenu Vikky @ Vignesh, aged 22 years, son of Narayanan is directed to set at liberty forthwith unless required in connection with any other case. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
30.01.2023

Index:Yes
Neutral Citation : Yes/No
cse



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To
WEB COPY

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
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Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai Police Commissionerate,
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- 5.The Public Prosecutor,
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**M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.**

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