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H.C.P.No.1367 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09..01..2023

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The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **N.ANAND VENKATESH**

Habeas Corpus Petition No.1367 of 2022

Manjula
W/o.Late Rajamurugan

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector & District Magistrate,
Office of the District Collector & District Magistrate,
Nagappatinam,
Nagappatinam District.
- 3.The Superintendent of Police,
Central Prison,
Thiruchirapalli.
- 4.The Inspector of Police,
Prohibition Enforcement Wing,
Nagappatinam District.



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5. The Superintendent of Police,
Nagappatinam,
Nagappatinam District.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records relating to the detention order passed by the 2nd respondent in Detention Order C.O.C.No.24/2022 dated 18.05.2022 and to quash the same and direct the respondents to produce the body or person of the detenu, Vijayaragavan (aged 25), S/o.Rajamurugan, before this Court and set him at liberty, now detained at Central Prison, Thiruchirapalli.

For Petitioner : Mr.U.Kathiravan

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

ORDER

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

The petitioner is the mother of the detenu viz., Vijayaragavan, son of late Rajamurugan. The detenu has been detained by the second respondent by his order in C.O.C.No.24/2022 dated 18.05.2022, holding him to be a "Bootlegger", as contemplated under Section 2(b) 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 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 on behalf of the detenu was not considered in time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. 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 18.05.2022. A representation was made on behalf of the detenu on 25.06.2022 which was received on 30.06.2022 and remarks were called for by the Government from the Detaining Authority. Thereafter, the Government considered the matter and passed the order rejecting the representation on 01.08.2022.

6. It is the contention of the petitioner that there was a delay of 32 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 10 days were Government Holidays, hence, there was an inordinate delay of 22 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 22 days in considering the representation by the Hon'ble Minister for Home, 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 C.O.C.No.24/2022 dated 18.05.2022 passed by the second respondent is set aside. The detenu viz., Vijayaragavan, Son of late



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Rajamurugan, 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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Index: Yes/No
kmk

To

- 1.The Additional Chief Secretary to Government, Home, Prohibition and Excise Department, Fort St. George, Chennai - 600 009.
- 2.The District Collector & District Magistrate,Office of the District Collector & District Magistrate, Nagappatinam, Nagappatinam District.
- 3.The Superintendent of Police, Central Prison, Thiruchirapalli.
- 4.The Inspector of Police, Prohibition Enforcement Wing, Nagappatinam District.
- 5.The Superintendent of Police, Nagappatinam, Nagappatinam District.
- 6.The Joint Secretary to Government of Tamil Nadu, Public, Law and Order Department, Secretariat, Chennai – 9.
- 7.The Public Prosecutor, High Court, Madras.

P.N.PRAKASH.J.,



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