



HCP(MD)No.454 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.09.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.454 of 2023

Saranya

.. Petitioner/wife of
the detenu

Vs.

1.The State of Tamil Nadu
rep. by its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The District Collector and District Magistrate
District Collectorate,
Dindigul District.

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

.. Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the entire records connected with the detention order in Detention order No.06/2023 dated 17.02.2023 passed by the respondent No.2 on petitioner's husband namely, Balasubramanian @ Balu, male aged 35/2023 S/o.Ganesan, has



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been detained and branded as Goonda in exercise of the powers conferred by Section 3(1) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Cyber law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act 1982 and confined at Central Prison, Madurai District and set him at liberty forthwith.

For Petitioner : Mr.K.Gunasekara Oandian

For Respondents : Mr.A.Thiruvadikkumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH, J.)

The petitioner is wife of the detenu viz., Subramanian @ Balu, aged about 35 years S/o.Ganesan. The detenu has been detained by the second respondent by his order in Detention order No.06/2023 dated 17.02.2023 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 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.



3. Among other grounds, the detention order is mainly attacked on the following grounds:

(i) there is a delay in passing the order of detention. Learned counsel appearing for the petitioner strongly contended that though the detenu was arrested on 08.01.2023, the detention order was passed only on 17.02.2023 i.e., after a considerable delay of nearly 40 days, and

(ii) 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. Therefore, on these grounds, the detention order is liable to be interfered with.

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.As seen from the grounds of detention, it is clear that though the detenu was arrested on 08.01.2023, the order of detention came to be passed only on 17.02.2023 and hence, there is an abnormal delay in passing the order of Detention, which caused prejudice to the interest of the detenu.

6. Likewise, the petitioner made a representation dated 10.03.2023. Thereafter, remarks were called for by the Government from the Detaining Authority and the remarks were duly received. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.04.2023.

7. It is the contention of the petitioner that there was a delay of 3 days in submitting the remarks by the Detaining Authority, of which two days were Government holidays and hence there was an inordinate delay of one day in submitting the remarks. It is the further contention of the petitioner that there was a delay of 5 days, in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, two days were Government Holidays and hence, there was inordinate delay of 2 days in considering the representation.



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8. 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.

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, there is no satisfactory explanation offered by the Detaining Authority for the delay in passing the order of detention.



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Apart from the delay in passing the detention order, admittedly, there is an inordinate and unexplained delay of four days in submitting the remarks by the Detaining Authority and in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. Hence, on these grounds, the impugned order of detention is liable to be set aside.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention order No.06/2023 dated 17.02.2023 passed by the second respondent is set aside. The detenu, viz., Balasubramanian @ Balu S/o.Ganesan, aged about 35 years, is directed to be released forthwith unless her detention is required in connection with any other case.

(M.S.R.,J.) (M.N.K.,J.)
25.09.2023

NCC :Yes / No
Internet : Yes
RR



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To

1.The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai 600 009.

2.The Joint Secretary
Public Law and Order
Secretariat, Chennai.

2.The District Collector and District Magistrate
District Collectorate,
Dindigul District.

4.The Superintendent of Prison,
Central Prison
Madurai District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR,J.

RR

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