



HCP(MD)No.1090 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.02.2023

CORAM

**THE HON'BLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

H.C.P.(MD)No.1090 of 2022

Pitchaimari

.. Petitioner /Sister of the
Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai-9.

2.State represented by
The District Collector and
District Magistrate,
Tenkasi District,
Tenkasi.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records from the second respondent in M.H.S.Confdl.No.63/2022 dated 13.06.2022 by setting aside the said order of detention passed by the second respondent and setting the detenu (Mariappan alias Pal Mariappan) aged 29, S/o.Murugan, at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner :Mr.K.Prabhu

For Respondents :Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

DR. G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.

This Habeas Corpus Petition is filed by the sister of the detenu viz., Mariappan alias Pal Mariappan, aged about 29 years, S/o.Murugan. The detenu has been detained by the second respondent, by his order in M.H.S.Confdl.No.63/2022 dated 13.06.2022 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 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. According to the petitioner, the detenu is being branded as Goonda, since he is arrayed as an accused in adverse case and ground case of chain snatching attracting the offence of under Sections 394 r/w 397 IPC. It is further stated that the detaining authority, while comparing a similar case in which, bail was granted under Section 174 Cr.P.C and came to a conclusion that there is a likelihood of the detenu being granted bail and the delay in considering the representation being canvased before this Court.

4. The Detention Order in question was passed on 13.06.2022. The petitioner made a representation dated 21.06.2022. Thereafter, the detaining authority has forwarded the files to the Government on 15.07.2022. Thereafter, the Government considered the matter and passed the order for rejecting the petitioner's representation on 05.05.2022.

5. It is the contention of the petitioner that there was a delay of 21 days in submitting the files by the Detaining Authority, of which only 6 days were Government holidays and hence, there was an inordinate delay of 15 days in submitting the remarks.



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6. 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.

7. 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.

8. 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.

9. In the subject case, admittedly, there is an inordinate and unexplained delay of 15 days in submitting the files by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.



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10. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.63/2022 dated 13.06.2022 passed by the second respondent is set aside. The detenu, viz., Mariappan alias Pal Mariappan, aged about 29 years, S/o.Murugan, is directed to be released forthwith unless his detention is required in connection with any other case.

(G.J.,J.) (S.M.,J.)
06.02.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

- 1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai-9.
- 2.The District Collector and
District Magistrate,
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Tenkasi.
- 3.The Superintendent of Prison,
Central Prison,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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