



HCP(MD)No.1447 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.07.2023

CORAM

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

H.C.P.(MD)No.1447 of 2022

Saraswathi

.. Petitioner /Mother of the detenu

Vs.

1.State of Tamil Nadu represented by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Magistrate and District Collector,
O/o.The District Magistrate and District Collector,
Virudhunagar District,
Virudhunagar.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records pertaining to the detention order passed by the 2nd respondent in Detention order in Cr.M.P No.28/2022 (GOONDA) dated 08.07.2022 and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's



HCP(MD)No.1447 of 2022

son namely Vignesh, S/o.Periasamy @ Sengodan, Male, aged about 21 years, who is detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.S.Maya Perumal

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu viz., Vignesh aged about 21 years, S/o.Periasamy @ Sengodan. The detenu has been detained by the second respondent by his order in Cr.M.P.No.28/2022 (Goonda) dated 08.07.2022 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.



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 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.

5. The Detention Order in question was passed on 08.07.2022. The petitioner made a representation dated 28.07.2022. Thereafter, remarks were called for by the Government from the Detaining Authority. The remarks



HCP(MD)No.1447 of 2022

were duly received. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 04.08.2022.

6. It is the contention of the petitioner that there was a delay of 11 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, 4 days were Government Holidays and hence, there was inordinate delay of 7 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.

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.



HCP(MD)No.1447 of 2022

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 7 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.28/2022 (Goonda) dated 08.07.2022 passed by the second respondent is set aside. The detenu, viz., Vignesh, S/o.Periasamy @ Sengodan, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (M.N.K.,J.)
03.07.2023

NCC : Yes / No
Index : Yes / No
Lm/RR



HCP(MD)No.1447 of 2022

To

1. The Principal Secretary to Government,
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Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
2. The District Magistrate and District Collector,
O/o. The District Magistrate and District Collector,
Virudhunagar District,
Virudhunagar.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD)No.1447 of 2022

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

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