



H.C.P(MD)No.1778 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.07.2023

CORAM :

THE HONOURABLE MR JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

H.C.P(MD)No.1778 of 2022

Gandhimathi

.. Petitioner

VS.

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

2.State Rep. by
The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli - 9.

3.The Superintendent of Prison,
Central Prison,
Coimbatore - 18.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records from the second respondent in M.H.S.Confdl.No.181/2022 dated 12.10.2022 by setting aside the order of detention passed by the second respondent and setting the



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detenu Arumugapandian @ Bala Vivekananthan @ Rocket Raja,
S/o.Jegatheesan, now detained in the Central Prison, Coimbatore at liberty.

For Petitioner : Mr.Paul Kanagaraj

For respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.S.RAMESH, J.]

The petitioner is the sister of the detenu viz., Arumugapandian @ Bala Vivekananthan @ Rocket Raja, S/o.Jegatheesan, aged about 51 years. The detenu has been detained by the second respondent by order in M.H.S.Confdl.No.181/2022 dated 12.10.2022 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 arguments on the following grounds:

(i) The detaining authority, after being aware of the fact that there was no bail application filed by the detenu, relied upon an order passed in CrI.M.P.No.1805/2018 and came to the conclusion that there is a real possibility of the detenu coming out on bail, since in similar cases, bails are granted by the appropriate Courts. The learned counsel for the petitioner pointed out that the order relied upon by the detaining authority is not similar in nature; and

(ii) There is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel submitted that the representation dated 14.10.2022 made by the petitioner was not considered on time and there was an inordinate and unexplained delay in considering the representation of the petitioner and therefore, there is violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.



4. However, the learned Additional Public Prosecutor would submit that though there was delay in considering the representation and the order relied upon by the detaining authority is not similar, no prejudice has been caused to the detenu and therefore, on such technical grounds alone, the impugned detention order cannot be quashed.

5. The Detention Order in question was passed on 12.10.2022. The petitioner made a representation dated 14.10.2022, which was received on 17.10.2022. 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 08.11.2022 and the same is served on the detenu only on 12.11.2022.

6. It is the contention of the petitioner that there was a delay of more than 20 days in submitting and receiving the remarks by the Detaining Authority and in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary



dealt with it, of which, 7 days were Government Holidays and hence, there was inordinate delay of more than 13 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.

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 instant case, admittedly, there is an inordinate and unexplained delay of more than 13 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.

11. On carefully going through the detention order, it is seen that the detaining authority was aware of the fact that no bail application was filed by the detenu. However, the detaining authority took into consideration the order passed in CrI.M.P.No.1805/2018 and came to the conclusion that there is a likelihood of the detenu coming out on bail, since in similar cases, bails are granted by the appropriate Courts. Perusal of the order passed in CrI.M.P.No.1805/2018 shows that the learned Principal Sessions Judge, Tirunelveli, after considering the fact that substantial part of the investigation was over and the accused therein, namely, Manikandan @ Mani, had no previous antecedents, had granted bail to him and hence, that bail order relied upon by the detaining authority cannot be considered to be a similar one.



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12. In view of the fact that there is an inordinate and unexplained delay in considering the representation of the petitioner and that the order relied upon by the detaining authority is not a similar one, the detention order suffers from non-application of mind and the same is liable to be interfered with.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.181/2022 dated 12.10.2022 passed by the second respondent is set aside. The detenu, viz., Arumugapandian @ Bala Vivekananthan @ Rocket Raja, S/o.Jegatheesan, aged about 51 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.)

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NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking order
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Tirunelveli - 9.
- 3.The Superintendent of Prison,
Central Prison,
Coimbatore - 18.
- 4.The Superintendent of Prison,
Puzhal Central Prison,
Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Joint Secretary,
Public (Law and Order) Department,
Fort St.George, Chennai.



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