



HCP(MD)No.1798 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.07.2023

CORAM

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

H.C.P.(MD)No.1798 of 2022

Amrin Banu

.. Petitioner / Wife of the Detenu

Vs.

- 1.State of Tamil Nadu,
Represented by the Secretary to Government,
Public (Law & Order-F) Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Dindigul District,
Dindigul.
- 3.The Superintendent of Prison,
Central Prison,
Madurai,
Madurai District.



HCP(MD)No.1798 of 2022

4.The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi – 110001.

.. Respondents

*(R-4 is impleaded as per order of the Court dated 18.11.2022 in Crl.M.P.
(MD).No.13448 of 2022 in H.C.P.(MD).No.1798 of 2022)*

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in N.S.A.Detention Order No.02/2022 dated 13.10.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu i.e., the petitioner's husband namely Mohammed Iliyas, aged about 29 years, S/o.Mohammed Hussain, now detained at the Central Prison, Madurai, Madurai District before this Court and set him at liberty forthwith.

For Petitioner	: Mr.M.Abdul Javith Akthar
For R-1 to R-3	: Mr.A.Thiruvadikumar Additional Public Prosecutor
For R-4	: Mr.ARL.Sundaresan Additional Solicitor General of India assisted by Mr.S.Jeya Singh Senior Panel Counsel Government of India



WEB COPY



HCP(MD)No.1798 of 2022

ORDER

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

The petitioner is the wife of the detenu viz., Mohammed Iliyas, aged about 29 years, S/o.Mohammed Hussain. The detenu has been detained by the second respondent by his order in N.S.A.Detention Order No.02/2022 dated 13.10.2022, in exercise of the powers under Section 3(2) of the National Security Act, 1980 (hereinafter referred to as 'Act'). The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the respondents 1 to 3 and the learned Additional Solicitor General of India appearing for the fourth respondent. We have also perused the records produced by the Detaining Authority.



HCP(MD)No.1798 of 2022

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 following grounds:

a) the detaining authority, after being aware of the fact that there was no bail application filed by the detenu, came to the conclusion that there is a real possibility of the detenu coming out on bail by relying upon the order passed in CrI.M.P.No.1533/2022 dated 15.06.2022. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not similar and on that score, the detention order is liable to be interfered with; 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 dated 25.10.2022 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. The learned Additional Public



HCP(MD)No.1798 of 2022

Prosecutor relied upon a decision of the co-ordinate Bench of this Court in the case of ***Susamma Baby Vs. The State rep., by The Principal Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai-9***, passed in ***H.C.P.(MD).No.1389 of 2022 dated 11.04.2023*** and contended that there cannot be any similarity or same set of facts and that the term “similar offences” cannot be expected to have the same set of facts with same overt acts against the accused involved.

5. The learned Additional Public Prosecutor further submitted 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.

6. In the decision (***Susamma Baby Vs. The State rep., by The Principal Secretary to Government, Home, Prohibition and Excise***



HCP(MD)No.1798 of 2022

Department, Secretariat, Chennai-9, passed in H.C.P.(MD).No.1389 of 2022 dated 11.04.2023) relied upon by the learned Additional Public Prosecutor, it was recorded therein that the offences under the POCSO Act in the similar case is similar to the offences in the ground case involved in the detenu's case therein and it is on the background of these facts that the co-ordinate Bench had come to such a decision.

7. In the instant case, the detenu was involved in the offences under Sections 446, 447, 436 IPC, which relates to house breaking, criminal trespass and mischief by fire with intention to destroy the immovable property, apart from the offences under Sections 153(A), 147, 120(B) IPC and Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

8. On carefully going through the detention order, it is seen that the detaining authority relied upon a similar case in CrI.M.P.No.1533/2022 dated 15.06.2022 for the purpose of arriving at a subjective satisfaction that



HCP(MD)No.1798 of 2022

the detenu is likely to come out on bail, which would be prejudicial to the communal harmony and maintenance of public order. In the similar case, the bail Court had taken into consideration of the involvement of the accused therein for the offences under Sections 153(A), 295(A) and 505(2) IPC, whereas, the accused in the ground case has involved himself in various other offences and thus, being released on bail in the ground case cannot be comparable with the similar case. In other words, the possibility of coming out on bail for the detenu, who has several other offences apart from the offences mentioned in the similar case, is much lesser. Thus, the comparison made by the detaining authority may not be proper and the consequential subjective satisfaction requires interference.

9. Further, Article 22(5) of the Constitution of India and Section 8(1) of the Act provides that the detaining authority shall communicate to the detenu the grounds on which the order has been made within five days from the date of detention and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.



HCP(MD)No.1798 of 2022

WEB COPY

10. In the present case, the detention order in question was passed on 13.10.2022 and the petitioner herein had made a representation dated 25.10.2022 to the State Government, which was received by them on 02.11.2022. The State Government had forwarded the representation along with para wise comments to the Ministry of Home Affairs, New Delhi, vide letter dated 30.11.2022, which was received by them on 12.12.2022. Thereafter, the comments were duly forwarded to the concerned Departments and ultimately, the Union Home Secretary had rejected the representation on 19.12.2022. Hence, there was no delay on the part of the Ministry of Home Affairs in considering the petitioner's representation.

11. However, the representation dated 25.10.2022 made by the petitioner to the State Government was received by them on 02.11.2022 and was considered only on 16.11.2022 and reply was sent to the petitioner on the same day. During the course of consideration of the representation, there was a delay of 11 days, after excluding the number of holidays.



HCP(MD)No.1798 of 2022

WEB COPY

12. 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.

13. 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.

14. 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.



HCP(MD)No.1798 of 2022

15. In the subject case, admittedly, there is an inordinate and unexplained delay of 11 days in considering the representation by the State Government.

16. On both the grounds, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

17. In the result, the Habeas Corpus Petition is allowed and the order of detention in N.S.A.Detention Order No.02/2022 dated 13.10.2022 passed by the second respondent is set aside. The detenu, viz., Mohammed Iliyas, S/o.Mohammed Hussain, aged about 29 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.)
27.07.2023

NCC : Yes / No
Index : Yes / No
Lm/Yuva



HCP(MD)No.1798 of 2022

To

1. The Secretary to Government,
State of Tamil Nadu,
Public (Law & Order-F) Department,
Secretariat,
Chennai – 600 009.
2. The District Collector and District Magistrate,
Dindigul District,
Dindigul.
3. The Superintendent of Prison,
Central Prison,
Madurai,
Madurai District.
4. The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi – 110001.
5. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George,
Chennai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD)No.1798 of 2022

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

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