



HCP(MD)No.1817 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.07.2022

CORAM

The Honourable Mr. Justice **M.S.RAMESH**
and
The Honourable Mr. Justice **M.NIRMAL KUMAR**

H.C.P.(MD)No.1817 of 2022

Gracemary

.. Petitioner / wife of the
detenu

Vs.

- 1.The State of Tamil Nadu
rep. by Additional Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George
Chennai - 600 009.
- 2.The District Collector and District Magistrate
Theni District
Theni.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Thenkarai Police Station,
Periyakulam
Theni.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the detention order passed by the 2nd respondent in No.Detention Order No.75/2022 dated 11.08.2022 and quash the same and direct the respondents to produce the person or body of the detenu, Kanikkairaj, S/o.Thomas, aged about 63 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.T.Sivananthan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Kanikkairaj aged about 63 years, S/o.Thomas. The detenu has been detained by the second respondent by his order in Detention Order No.75/2022 dated 11.08.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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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.



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5. The Detention Order in question was passed on 11.08.2022. The petitioner made a representation dated 08.09.2022. 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 24.09.2022.

6. It is the contention of the petitioner that there was a delay of 2 days in submitting the remarks by the Detaining Authority and hence there was an inordinate delay of 2 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received and there was a delay of 6 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, one day was a Government Holiday and hence, there was inordinate delay of 5 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



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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, admittedly, there is an inordinate and unexplained delay of 2 days in submitting the remarks by the Detaining Authority and unexplained delay of 5 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.



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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.75/2022 dated 11.08.2022 passed by the second respondent is set aside. The detenu, viz., Kanikkairaj, S/o.Thomas, aged about 63 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.)
05.07.2023

Index : Yes/No

Internet : Yes

RR

To

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



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