



HCP(MD)No.1848 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.1848 of 2022

Shameem Banu

.. Petitioner /Mother of the Detenu

Vs.

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

2.The Secretary to Government,
Public (Law & Order-F) Department,
Secretariat,
Chennai – 9.

3.The Commissioner of Police,
Madurai City,
Madurai.

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

5.The Inspector of Police,
B4 Keeraithurai Police Station,
Madurai City,
Madurai.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records in connection with the detention order in No.01/NSA/2022 dated 14.10.2022 on the file of the Respondent No.3 and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Abuthahir aged about 32 years son of Anwar Hussain, now confined at Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.M.Arumugam
For R-1 : Mr.ARL.Sundaresan
Additional Solicitor General of India
assisted by
Mr.S.Jeyasingh
Senior Panel Counsel for
Government of India
For R-2 to R-5 : 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., Abuthahir, aged about 32 years, S/o.Anwar Hussain. The detenu has been detained by the third respondent by his order in No.01/NSA/2022 dated 14.10.2022, in exercise of the powers under Section 3(2) of the National Security Act, 1980



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(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 Solicitor General of India appearing for the first respondent and the learned Additional Public Prosecutor appearing for the respondents 2 to 5. 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 following grounds:

(i) the detaining authority has relied upon the order passed in Cr.M.P.No.118/2016 dated 25.05.2016 and came to the conclusion that in a similar case bail has been granted and that there is likelihood of the detenu released on bail. The learned counsel submitted that the detaining authority was aware of the fact that the detenu filed bail application in the ground case and the same is pending. The learned counsel for the petitioner therefore submitted that the order relied upon by the detaining authority is



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not similar and there is non application of mind on the part of the detaining authority; 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 31.10.2022 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. 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. On carefully going through the detention order, it is seen that in the order that was relied upon by the detaining authority in Cr.M.P.No.118/2016 dated 25.05.2016, the accused therein was enlarged on bail for the offences under Sections 147, 148 r/w 120(b) IPC and Section



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3(a) of Explosive Substances Act, 1908. However, in the present case, the offences involved are under Section 4(a) of Explosive Substances Act, 1908 and Section 4 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 altered into Section 120B IPC and 4(a) of Explosive Substances Act, 1908 and Section 4 of Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 altered into Section 153(A), 120B IPC and Section 4(a) of Explosive Substances Act, 1908 and Section 4 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The period of incarceration of the detenu is also lesser in the ground case than the similar case. Hence, the order that was relied upon by the detaining authority cannot be considered to be an order passed in a similar case.

6. 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.



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7. In the present case, the detention order in question was passed on 14.10.2022 and the petitioner herein had made a representation dated 31.10.2022 in regional language to the State Government, which was received by them on 07.11.2022. The State Government had forwarded the representation vide letter dated 07.11.2022 to the Ministry of Home Affairs, New Delhi, which was received by them on 14.11.2022. On 15.11.2022, the Ministry had sent a wireless message to the State Government seeking for english translated copy. The translated copy of the representation along with para wise comments were received by the Ministry on 16.11.2022. Thereafter, the comments were duly forwarded to the concerned Departments and ultimately, the Union Home Secretary had rejected the representation on 23.11.2022. Hence, there was no delay on the part of the Ministry of Home Affairs in considering the petitioner's representation.

8. However, the representation dated 31.10.2022 made by the petitioner to the State Government was received by them on 07.11.2022 and was considered only on 17.11.2022 and reply was sent to the petitioner on the same day. During the course of consideration of the representation, there was a delay of 9 days, after excluding the number of holidays.



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9. 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.

10. 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.

11. 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.

12. In the subject case, admittedly, there is an inordinate and unexplained delay of 9 days in considering the representation by the State Government.



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13. 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.

14. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.01/NSA/2022 dated 14.10.2022 passed by the third respondent is set aside. The detenu, viz., Abuthahir, S/o.Anwar Hussain, aged about 32 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



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To

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(Department of Internal Security),
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New Delhi – 110001.
2. The Secretary to Government,
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Secretariat,
Chennai – 9.
3. The Commissioner of Police,
Madurai City,
Madurai.
4. The Superintendent of Prison,
Central Prison,
Madurai.
5. The Inspector of Police,
B4 Keeraithurai Police Station,
Madurai City,
Madurai.
6. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George,
Chennai.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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