



HCP(MD)No.1976 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.07.2023

CORAM

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

H.C.P.(MD)No.1976 of 2022

Kanimozhi

.. Petitioner / wife of the detenu

Vs.

1.The State of Tamil Nadu

Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The District Magistrate / District Collector

O/o. District Collector,
Madurai District, Madurai.

3.The Superintendent of Prison,

Central Prison,
Madurai.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire record connection with the Detention Order B.C.D.F.G.I.S.S.S.V.No.74/2022, dated 22.10.2022 passed by the 2nd respondent on the petitioner's husband namely Suriya @ Suriyaprakash (22/22) Son of Selvam, 131, Kammaipatti, Kalvelipatti Post,



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Vadipatti Taluk, Madurai District has been detained and branded as “Goonda” under Section 3(1) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Cyber Law, Drug offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act – 1982 (Tamil Nadu Act 14 of 1982) read with order issued by the Government in G.O. (D)No.308, Home, Prohibition and Excise (XVI) Department, dated 13.10.2022 and confined at Central Prison, Madurai to set aside the same and produced him before this Court.

For Petitioner : Mr.M.Jothi Babu

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Suriya @ Suriyaprakash, S/o.Selvam, aged about 22 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No. 74/2022, dated 22.10.2022 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 the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he has mainly focused his argument on two grounds. The first ground is that the copies of the initial remand order and the extension of remand order have not been furnished to the detenu, despite the same has been sought for by the petitioner in her representation. The second ground is 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 and hence, the detention order is liable to be set aside.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition and 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



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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 22.10.2022. The petitioner made a representation dated 23.11.2022. Thereafter, remarks were called for by the Government from the Detaining Authority. The remarks were duly received. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.12.2022.

6. It is the contention of the petitioner that 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, 2 days were Government Holidays and hence, there was inordinate delay of 4 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 subject case, admittedly, there is an inordinate and unexplained delay of 4 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. Further, on a perusal of the documents available on record, it is seen that the copies of the remand order and remand extension order have not been furnished to the detenu, which vitiates the order of detention. 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 B.C.D.F.G.I.S.S.S.V.No.74/2022, dated 22.10.2022, passed by the second respondent is set aside. The detenu, viz., Suriya @ Suriyaprakash, S/o.Selvam, aged about 22 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.)
17.07.2023

NCC : Yes/ No
Index : Yes/No

vsm



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To

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Secretariat
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- 2.The District Magistrate / District Collector
O/o. District Collector,
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- 3.The Superintendent of Prison,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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