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H.C.P.(MD) No.1981 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

H.C.P.(MD) No.1981 of 2022

Vasanth Gokila

... Petitioner

-vs-

1.State of Tamil Nadu
rep.by the Additional Chief
Secretary to Government
Home, Prohibition and
Excise Department
Secretariat, Chennai-600 009

2.The Commissioner of Police
Tirunelveli City
Tirunelveli

3.The Superintendent of Prison
Central Prison
Palayamkottai
Tirunelveli

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order in No.57/BCDFGISSSV/2022, dated 22.06.2022, on the file of the



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second respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son i.e., Sinoth, aged about 29 years, son of Chandrasekar, now confined in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the mother of the detenu *viz.*, Sinoth, aged about 29 years. The detenu has been detained by the second respondent by his order No.57/BCDFGISSSV/2022, dated 22.06.2022. 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.



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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 a 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.

5. The Detention Order in question was passed on 22.06.2022. The petitioner made a representation on 16.11.2022 and it was received on 24.11.2022. Thereafter, the file was submitted to the Secretary on 08.12.2022 and the Secretary dealt with the matter on



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08.12.2022. Thereafter, the Deputy Secretary dealt with the matter on 09.12.2022. Subsequently, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.12.2022.

6. It is the contention of the petitioner that there was a delay of thirteen days in submitting the file to the Secretary, of which four days were Government holidays and hence there was an inordinate delay of nine days in submitting the file to the Secretary. It is the further contention of the petitioner that there was a delay of nine 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 four days were Government holidays, hence, there was inordinate delay of five 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.



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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*

[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 nine days in submitting the file by the Detaining Authority and unexplained delay of five 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention No.57/BCDFGISSSV/2022, dated 22.06.2022, passed by the second respondent is set aside. The detenu, viz., Sinoth,



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aged about 29 years, son of Chandrasekar, is directed to be released forthwith unless his detention is required in connection with any other case.

[P.N.P., J.]

[G.J., J.]

06.01.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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To

- 1.The Additional Chief
Secretary to Government,
Home, Prohibition and
Excise Department,
State of Tamil Nadu,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

