



HCP(MD)No.437 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.09.2022

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THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.437 of 2022

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... Petitioner / Mother of Detenue

/Vs./

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Sivagangai District,
Sivagangai.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Kalaiyarkovil Police Station,
Sivagangai District.

...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 connected with



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the detention order in Cr.M.P.No.12/Goonda/2022 dated 08.03.2022 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son, namely Arun @ Arunkumar, aged about 24 years, S/o.Somasundaram, now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Ms.S.Prabha

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Arun @ Arunkumar, aged about 24 years, S/o.Somasundaram. The detenu has been detained by the second respondent by his order in Cr.M.P.No.12/Goonda/2022 dated 08.03.2022, 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.



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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 counsel appearing for the petitioner submitted that the detaining authority had taken note of the bail order passed in CrI.M.P.(MD)No.3723 of 2019, dated 14.08.2019 and has come to a conclusion that there is a likelihood of the detenu being granted bail. According to the learned counsel appearing for the petitioner, the order that was taken into consideration by the detaining authority to come to a



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conclusion that there is a likelihood of the detenu being released on bail, is not an order passed in the similar case.

5. The learned counsel appearing for the petitioner further submitted that inspite of request was made for furnishing the translated copy of the bail order, the same was not furnished.

6. 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.

7. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed and it was taken on file by the Special Court for SC/ST Act cases, Sivagangai, in Spl.S.C.No.15 of 2022.



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8. The Detention Order in question was passed on 08.03.2022. The petitioner made a representation dated 18.03.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.03.2022. The remarks were duly received on 28.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.04.2022.

9. It is the contention of the petitioner that the remarks were received on 28.03.2022 and there was a delay of 5 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 3 days in considering the representation.

10. 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.



WEB COURT

11. 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.

12. 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.

13. In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. It is seen that the bail order that was relied upon in CrI.M.P.(MD)No.3723 of 2019, dated 14.08.2019 pertains to the case, where the co-accused was granted bail and there was no witness examined on the side of the prosecution. In such circumstances, bail was granted to the accused therein. In the present case, the bail petition filed by the detenu was dismissed and there was no bail petition pending as on the date of passing detention order. That apart, bail



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order that was relied upon by the detaining authority is not a similar case, as was recorded by the detaining authority and it clearly reflects non-application of mind. It is also seen that inspite of the request made by the detenu for furnishing translated copy of the bail order, the same has not been furnished.

14. In view of the above, the detention order suffers from non-application of mind on the part of the detaining authority and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

15. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.12/Goonda/2022 dated 08.03.2022 passed by the second respondent is set aside. The detenu, viz., Arun @ Arunkumar, aged about 24 years, S/o.Somasundaram, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
30.09.2022

Index : Yes/No
Internet : Yes



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and

N. ANAND VENKATESH,J.

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To:

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- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
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Kalaiyarkovil Police Station,
Sivagangai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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