



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1062 of 2015

Maheshwari : Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The District Collector and District Magistrate,
Theni District, Theni.

3.The Superintendent,
The Central Prison, Madurai. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the records of the impugned order of detention order No.25/2015/C3, dated 03.07.2015, on the file of the second respondent and quash the same as illegal and to direct the respondents to produce the detenu - M.Vijayakumar, male, S/o.Mokkaiyathevar, aged 38 years, now detained at the Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.B.Pandiyarajan
For Respondents : Mr.A.Ramar,
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by V.S.RAVI,J]

The petitioner is the wife of the detenu viz., M.Vijayakumar, S/o.Mokkaiyathevar, aged 38 years. The detenu has been detained, as per the order of the second respondent, dated 03.07.2015, under Section 2(e) of the Tamilnadu Act 14 of 1982, branding him as "Drug Offender". Challenging the same, she has come up with this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3.Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the



Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 03.07.2015. As against the same, the petitioner made representations on 12.07.2015, 16.07.2015, 12.07.2015 and 08.09.2015. The remarks were called for by the Government from the Detaining Authority on 15.07.2015, 21.07.2015, 10.08.2015 and 14.09.2015. The remarks were received on 31.07.2015, 10.08.2015, 25.08.2015 and 18.09.2015. Thereafter, the Government considered the issue and passed the order rejecting the representations on 13.08.2015, 14.08.2015, 03.09.2015 and 25.09.2015. It is the contention of the petitioner that there was delay of thirteen, eleven and three days respectively in submitting the remarks by the Detaining Authority and there was delay of eight, three seven and three days on the part of the Government in considering the representations.

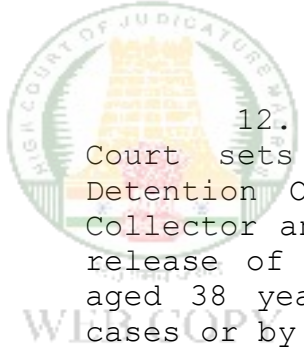
7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further 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 of the detenu.

9. 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 detention order.

10. In *Tara Chand Vs. State of Rajasthan and others*, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of more than six working days in considering the above mentioned representations and therefore, the impugned detention order is liable to be quashed.



12. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 03.07.2015, made in Detention Order No.25/2015/C3, by the second respondent, the District Collector and District Magistrate, Theni District, Theni, and directs the release of the detenu, by name M.Vijayakumar, male, S/o.Mokkaiyathevar, aged 38 years, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate,
Theni District, Theni.
3. The Superintendent,
The Central Prison, Madurai.
(In duplicate for communication to detenu)
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai -9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order Made in
H.C.P (MD) No.1062 of 2015
Dated: 25.11.2015

SH/AAL-MPA:03.12.2015:3P/7C