



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1071 of 2015

Baby

.. Petitioner

Vs.

1.State of Tamil Nadu,
rep. by its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed by the second respondent in C.O.C.No.39/2015, dated 16.06.2015, quash the same and consequently, direct the respondents to produce the detenu namely Ezhilarasi, W/o.Ramu @ Radhakrishnan, aged about 34 years, now detained at Special Prison for Women, Trichy before this Court and set her at liberty.

For Petitioner : Mr.V.Malaiyendran

For Respondents : Mr.A.Ramar,

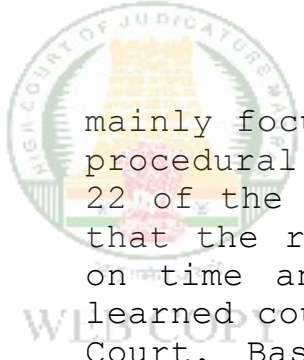
Additional Public Prosecutor.

O R D E R

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

The petitioner is the mother of the detenu viz., Ezhilarasi, W/o.Ramu @ Radhakrishnan, aged about 34 years. The detenu has been detained, as per the order of the second respondent under Section 2(f) of the Tamilnadu Act 14 of 1982, branding her as "Goonda". Challenging the same, she has come up with this 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.



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 16.06.2015. As against the same, the petitioner made a representation on 13.07.2015. The remarks were called for by the Government from the Detaining Authority on 16.07.2015. The remarks were received on 23.07.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 03.08.2015. It is the contention of the petitioner that there was delay of five days in submitting the remarks by the Detaining Authority and there was delay of five days on the part of the Government in considering the same.

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/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 ten working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, dated 16.06.2015, made in C.O.C.No.39/2015, by the second respondent / the District Collector and District Magistrate, Nagapattinam District and directs the release of the detenu by name Ezhilarasi, W/o.Ramu @ Radhakrishnan, aged about 34 years forthwith, if her continued custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar.

gcg

To

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

Order Made in
H.C.P (MD) No.1071 of 2015
16.11.2015