



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1126 of 2015

Kulanthai Gunaseeli

: Petitioner

Vs.

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

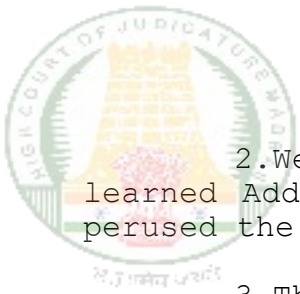
PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the respondent No.2 in Detention Order No.60 of 2015, dated 26.07.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Kamalesh Antony, S/o.Xavier Arulanandam, aged about 34 years, now detained at Madurai Central Prison, before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani
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 sister of the detenu - Kamalesh Antony, S/o.Xavier Arulanandam, aged about 34 years. He has been detained, as per the order of the second respondent, dated 26.07.2015, under Section 2(b) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), read with the order issued by the Government in G.O.(D). No.151, Home Prohibition and Excise (XVI) Department, dated 18.07.2015, under Section 3 of the said Act, branding him as "Boot-Legger". 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 26.07.2015. As against the same, the petitioner made representations dated 28.07.2015 and 29.07.2015. The remarks were called for by the Government from the Detaining Authority on 03.08.2015 and 04.09.2015. The remarks were received on 11.08.2015 and 16.09.2015. It is the contention of the petitioner that there was delay of 6 days in submitting the remarks by the Detaining Authority with regard to the first representation and also 8 days with regard to the second representation. Thereafter, the Government considered the issue and passed the order rejecting the representations on 14.08.2015 and 25.09.2015. Hence, there was delay of six days with regard to the first representation and 12 days with regard to the second representation.

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.

<https://hcservices.ecourts.gov.in/hcservices/> In *Prakash 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 the above mentioned working days 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 26.07.2015, made in Detention Order No.60 of 2015, passed by the second respondent and directs the release of the detenu, by name Kamalesh Antony, S/o.Xavier Arulanandam, aged about 34 years, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar.

/True Copy/

Sub Assistant Registrar.

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.(In duplicate to communicate the detenu)
- 4.The Joint Secretary to Government Public (Law and Order)Department,
Fort St.George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.R.Alagumani, Advocate, SR.No. 70231

ORDER MADE IN
H.C.P (MD) No.1126 of 2015
Dated: 07.12.2015

AM/10.12.2015/JGB.DP/SAR-II/3P/8C