



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1145 of 2015

Dhavuthamma

: Petitioner

Vs.

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

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

: 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 pertaining to the impugned detention order passed by the second respondent made in his proceedings in P.D.No.42/2015, dated 29.07.2015, in detaining the detenu under Section 2(b) of Tamil Nadu Act 14 of 1982 as a Boot-legger and quash the same and direct the respondents to produce the detenu namely A.Fathima, W/o.Allahpitchai, Female, aged about 55 years, who is detained in Special Prison for Women, Trichirappalli, before this Court and set her at liberty.

For Petitioner

: Mr.K.M.Karunakaran

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 daughter of the detenu - A.Fathima, W/o.Allahpitchia, aged about 55 years. She has been detained, as per the order of the second respondent, dated 29.07.2015, 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.168, Home Prohibition and Excise (XVI) Department, dated 18.07.2015, branding her as "Boot-Legger". Challenging the same, she has come up with this



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.

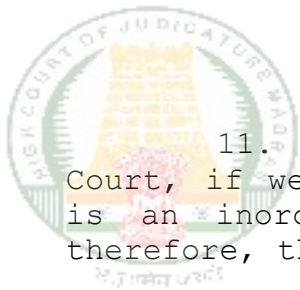
6. In this case, the Detention Order was passed on 29.07.2015 As against the same, the petitioner made a representation dated 01.08.2015. The remarks were called for by the Government from the Detaining Authority on 06.08.2015. The remarks were received on 17.08.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 31.08.2015. It is the contention of the petitioner that there was delay of seven days in submitting the remarks by the Detaining Authority and thereafter, there was delay of eight days in considering the 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.

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 fifteen 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 29.07.2015, made in P.D.No.42/2015, passed by the second respondent and directs the release of the detenu, by name A.Fathima, W/o.Allahpitchai, Female, aged about 55 years, forthwith, if her continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Secretary to Government, Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Thanjavur District, Thanjavur.
3. The Special Prison for women, Tiruchirappalli.
(in duplicate to communicate the detenu)
- 4 The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.K.M.Karunakaran, Advocate in SR.No. 69198

TS/04.12.2015/3P-8C/ SK/SAR - I

ORDER MADE IN
H.C.P (MD) No.1145 of 2015

Dated: **02.12.2015**