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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.1166 of 2015

S.Pushpalatha : Petitioner

Vs.

1.State, Rep by
The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli 9.

2.The Principal Secretary to Government,
Home, Prohibition and Excise [XIV] Department,
Secretariat, Chennai-600 009.

: 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 from the first respondent in No.M.H.S.Confdl No.81 of 2015, dated 17.07.2015, by setting aside the said order of detention passed by the first respondent and setting the detenu - A.Sivanperumal, aged 30 years, S/o.Arunachalam, at liberty, now detained in Central Prison, Palayamkottai.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor.

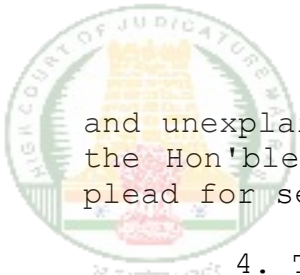
O R D E R

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

The petitioner is the wife of the detenu - A.Sivanperumal, aged 30 years, S/o.Arunachalam. He has been detained, as per the order of the first respondent in M.H.S.No.Confdl.No.81/2015, dated 17.07.2015, under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". 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 representations made by the petitioner were 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 representations, 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 17.07.2015. As against the same, the petitioner made two representations on 28.07.2015. The remarks were called for by the Government from the Detaining Authority on 31.07.2015. The remarks were received on 07.08.2015. Thereafter, the Government considered the issue and passed the order rejecting the representations on 14.08.2015. It is the contention of the petitioner that there was delay of five days in submitting the remarks by the Detaining Authority and also there was delay of three days on the part of the Government in considering the representation.

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

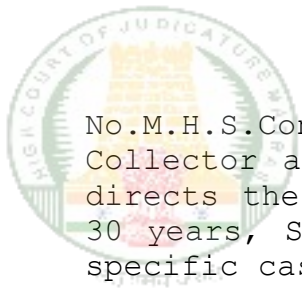
8. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously 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 eight 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 17.07.2015, made in



No.M.H.S.Confdl No.81 of 2015, by the first respondent, the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu, by name detenu - A.Sivanperumal, aged 30 years, S/o.Arunachalam, if his continued custody is not authorised in specific cases or by any other detention order.

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Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli 9.
- 2.The Principal Secretary to Government,
Home, Prohibition and Excise [XIV] Department,
Secretariat, Chennai-600 009.
- 3.The Joint Secretary to Government
Public (Law & order), Secretariat, Chennai
- 4.The Superintendent, Central Prison, Palayamkottai
- 5.The Superintendent of Police,
Tirunelveli District, Tirunelveli
- 6.The Inspector of Police
Alangulam Police Station,
Tirunelveli District
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.K.Prabhu, Advocate Sr.No.67616

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Order Made in
H.C.P(MD)No.1166 of 2015
Dated: 25.11.2015