



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P (MD) No.1792 of 2015

B.Saranya : Petitioner
Vs.

- 1.The Government of India,
Rep by its Secretary,
Ministry of Home Affairs, Department of Internal Security
North Block,
New Delhi 110 001.
 - 2.The State of Tamil Nadu,
Rep by its Secretary to Government,
Public [Law and Order-F] Department,
Fort.St.George, Secretariat, Chennai 9.
 - 3.The District Collector/District Magistrate,
Collectorate, Ramanathapuram District.
 - 4.The Superintendent of Central 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 third respondent in Cr.M.P.No.11/NSA/2015, dated 18.12.2015 and quash the detention order and produce the person or body of the petitioner's husband namely, T.Boopathy, S/o.Thangavelu (24/15), now detained at Central Prison, Madurai, Madurai District, before this Court and set him at liberty forthwith.

For Petitioner	: Mr.T.Lajapathi Roy
For Respondent Nos.2 to4	: Mr.S.Shanmugavelayutham Public Prosecutor Assisted by Mr.C.Ramesh, Additional Public Prosecutor.
For Respondent No.1	: Mr.D.Saravanan CGSSC



O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

This Habeas Corpus Petition is filed by the husband of the detenu - T.Boopathy, who is under detention, pursuant to the order passed by the third respondent dated 18.12.2015, in Cr.M.P.No.11/NSA/2015, under Section 3(2) of the National Security Act, 1980, [Central Act 65 of 1980], read with the order issued by the Government in G.O.(D).No.1172, Public [Law and Order-F], Department, dated 19.10.2015, under Sub-Section (3) of Section 3 of the said Act.

2. We have heard the learned counsel for the petitioner, The learned Central Government Standing Counsel for the first respondent and the learned Public Prosecutor for the respondents 2 to 4. We have also perused the records produced by the Detaining Authority.

3. The learned counsel for the petitioner contended that there is gross violation of procedural safeguards, which would vitiate the very detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Public Prosecutor opposed the Habeas Corpus Petition. According to the learned Public Prosecutor, 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. The Detention Order in question was passed on 10.12.2015. The petitioner made a representation dated 22.12.2015, which was received on 29.12.2015. Thereafter, remarks were called for by the Government from the Detaining Authority on 30.12.2015. The remarks were duly received on 01.01.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 09.02.2016.

6. It is the contention of the petitioner that there was a delay of eight days in considering the representation and its rejection.

7. In **Rekha Vs. State of Tamil Nadu, [2011 (5) SCC 244]**, the Hon'ble Supreme Court has 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 alleged activities undertaken by the detenu.



8. 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 order of detention.

9. 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 very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of eight days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the impugned Detention Order, passed by the third respondent, in his proceedings in Cr.M.P.No.11/NSA/2015, dated 18.12.2015, is quashed. The detenu, namely, T.Boopathy, S/o.Thangavelu, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government, Government of India,
Ministry of Home Affairs, Department of Internal Security,
North Block,
New Delhi 110 001.

2.The State of Tamil Nadu,
Rep by its Secretary to Government,
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3.The District Collector/District Magistrate,
Collectorate, Ramanathapuram District.

4.The Superintendent of Central Prison,
Madurai District.



5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1cc to Mr.D.Saravanan, Advocate SR.No.29821
+1cc to Mr.T.Lajapathi Roy, Advocate SR.No.30023

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Order made in
H.C.P (MD) No.1792 of 2015

Dated: 13.06.2016