



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2016

CORAM:

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.(MD)No.563 of 2016

Brindha : Petitioner
Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai -9.

2.The District Collector,
District Magistrate,
Ramanathapuram District,
Ramanathapuram.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the entire records in pursuant to the proceedings of the 2nd respondent in Detention Order in Cr.M.P.No.9/D.O/2016, dated 12.04.2016 and quash the same and consequently direct the respondents to produce the detenu, namely Karthik, S/o.Soorapuli @ Subramanian, aged 35 years who is now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.Mayilvahana Rajendran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by S.NAGAMUTHU, J.)

The petitioner is the wife the detenu viz., Mr.Karthik, S/o.Soorapuli @ Subramanian, aged about 35 years. He has been detained, as per the order of the second respondent, dated 12.04.2016, under Section 2(e) of the Tamilnadu Act 14 of 1982, branding him as "Drug Offender". Challenging the same, he has come up with this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the
<https://hc-services.reports.gov.in/hc-services/>
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 two grounds:

(i) The first ground is 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.

(ii) The second ground is that the subjective satisfaction arrived at by the Detaining Authority that there was a real possibility of the detenu coming out on bail, is totally baseless. He would submit that when there was no bail application at all filed by the detenu, the question of the detenu coming out on bail does not arise. Thus, there was no real possibility at all for the detenu to come out on bail, the learned counsel contended.

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. The learned Additional Public Prosecutor would further submit that the detenu is involved in a case for offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. He would further submit that there was every possibility for the detenu to move an application for bail either before the Court of Sessions or before the High Court, in which, there was every possibility for him to come out on bail, because in similar cases, similarly placed persons were granted bail either by the Sessions Court or by the High Court. Hence, the subjective satisfaction arrived by the detaining authority is reasonable.

6. We have considered the above submissions.

7. In this case, the Detention Order was passed on 12.04.2016. As against the same, the petitioner made a representation on 27.04.2016. The remarks were called for by the Government from the Detaining Authority on 02.05.2016. The remarks were received on 17.05.2016. Thereafter, the Government considered the issue and passed the order rejecting the representation on 27.05.2016. It is the contention of the petitioner that there was delay of 10 working days in submitting the remarks by the Detaining Authority and there was delay of 5 working days on the part of the Government in considering the same.



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

9. 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.

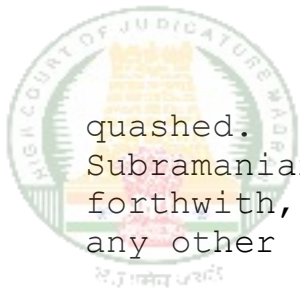
10. In *Sumaiya Vs. The Secretary to Government*, [2007 (2) MWN (Cr.) 145], a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the detention order.

11. 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.

12. 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 15 working days and thus, the impugned detention order is liable to be quashed on this sole ground.

13. Insofar as the second ground is concerned, if an application for bail is moved, before any competent Court by the detenu, then only, the question of coming out on bail would arise. In such a situation, the Detaining Authority may be satisfied that there is a real possibility of the detenu coming out on bail based on the fact that in similar cases, similarly placed persons have been granted bail. But, in this case, there was no such bail application filed by the detenu. There was no attempt also made by himself or any of his relatives to move any application for bail. When that be so, absolutely, there was no real possibility of the detenu coming out on bail. Accordingly, the satisfaction arrived by the detaining authority is totally baseless. In such view of the matter, the detention order is liable to be set aside on this ground also.

14. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Cr.M.P.No.09/D.O/2016, dated 12.04.2016, is



quashed. The detenu, namely, Karthick, S/o.Soorapuli @ Subramanian, aged about 35 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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Sd/-
Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai -9.
- 2.The District Collector,
District Magistrate,
Ramanathapuram District,
Ramanathapuram.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent , Central Prison, Madurai
- 5.The Joint Secretary to Government,
Public (Law and Order) , Fort Saint George, Madras-9

+One cc to Mr.M.Subash Babu, Advocate, SR.No.56934

gcg
RL/7C/4P/SKS/RR/20.10.2016

Order made in
H.C.P.(MD) No.563 of 2016

Dated:
28.09.2016