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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P (MD) No.791 of 2016

Krishnamoorthy

.. Petitioner

Vs.

1.State of Tamil Nadu rep. by
The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai.

2.The District Collector and
District Magistrate
O/o the District Collector and
District Magistrate
Nagapattinam District,
Nagapattinam

3.The Superintendent
Special Prison for Women
Tiruchirappalli.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records in detention order passed in C.O.C.No.47/2016 dated 18.06.2016 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner's wife namely Murugeswari, Wife of Krishnamoorthy, female aged 55 years, who is detained in Special Prison for Women, Tiruchirappalli before this Court and set her at liberty.

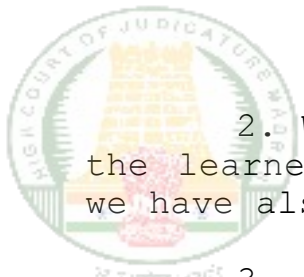
For petitioner
For respondents

: Mr.K.A.S.Prabhu
: Mr.A.Ramar
Additional Public Prosecutor

O R D E R

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

The petitioner is the husband of the detenue she has been detained as per the order of the 2nd respondent under Section 2(b) of the Tamil Nadu Act 14 of 1982, branding him as 'Bootlegger'.



2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and 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. But, the learned Additional Advocate General 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 18.06.2016. As against the same, the petitioner made a representation on 23.06.2016. The remarks were called for by the Government from the Detaining Authority on 28.06.2016. The remarks were received by the Detaining Authority on 08.07.2016. Thereafter, the Government considered the issue and passed the order rejecting the representation on 22.07.2016. It is the contention of the petitioner that there was delay of eight days in submitting the remarks by the Detaining Authority and there was delay of eight days on the part of the Government in considering the same.

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 contravention 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/detenu would be sufficient to set aside the detention order.

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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 days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the 2nd respondent, in his proceedings in C.O.C.No.47/2016 dated 18.06.2016 is quashed. The detenu, by name, Mrs.Murugeswari, aged about 55 years, wife of Krishnamoorthy, is ordered to be set at liberty forthwith, if she is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai.
- 2.The District Collector and District Magistrate
O/o the District Collector and District Magistrate
Nagapattinam District, Nagapattinam
- 3.The Superintendent, Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law and Order) Fort Saint George, Chennai-600 009
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

RR

RL/6C/3P/DB/24.10.2016

ORDER MADE IN
H.C.P (MD) No.791 of 2016