

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.10.2017

C O R A M :

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

H. C. P. No. 1148 of 2017.

Kanchana

Petitioner

-VS-

1. The Commissioner of Police,
Office of the Commissioner of police,
Egmore, Chennai.

2. The Principal Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St. George, Chennai- 600 009.

3. The Superintendent,
Special Prison for Women,
Puzhal Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Habeas Corpus, calling for the records pertaining to the order

of detention passed by the first respondent herein and made in B.C.D.F.G.I.S.S.S.V. No.241 of 2017 dated 08.05.2017 and to set aside the same and directing the third respondent to produce the body of the detenu and directing the third respondent to produce the body of the detenu Kumari.Selvi, D/o.Subramani, aged 24 years, now confined in Special Prison for Women, Puzhal, Chennai.

For Petitioner : Mr.T.S.Srinivasan

For Respondents : Mr. V.M.R.Rajendran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by N.SATHISH KUMAR, J.]

The petitioner is the daughter of the detenu, namely, Kumari. Selvi, Female, aged about 24 years. The detenu has been detained by the first respondent by his order in B.C.D.F.G.I.S.S.S.V. No.241 of 2017 dated 08.05.2017 holding her to be a Drug Offender as contemplated under Section 2 (e) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also

perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered in time and there was an inordinate and unexplained delay with regard to the same.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detinue 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 08.05.2017. The petitioner made a representation, dated 09.06.2017 and the same was received

on 12.06.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day, i.e., on 12.06.2017. The remarks were duly received on 20.06.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 22.06.2017.

6. It is the contention of the petitioner that there was a delay of 08 days in submitting the remarks by the Detaining Authority, of which 02 days were Government Holidays and hence there was an inordinate delay of 06 days in submitting the remarks.

7. In **Rekha vs. State of Tamil Nadu**, reported in 2011 (5) SCC 244, the Honourable 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 nature of the alleged activities undertaken by the detainee.

8. In **Sumaiya vs. The Secretary to Government**, reported in 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**, reported in 1980 (2) SCC 321, the Honourable 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 06 days in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention B.C.D.F.G.I.S.S.S.V. No.241 of 2017 dated 08.05.2017, passed by the first respondent is set aside. The detenu, namely, Kumari. Selvi, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

[R . S . A . , J .] [N . S . K . , J .]

13.10.2017

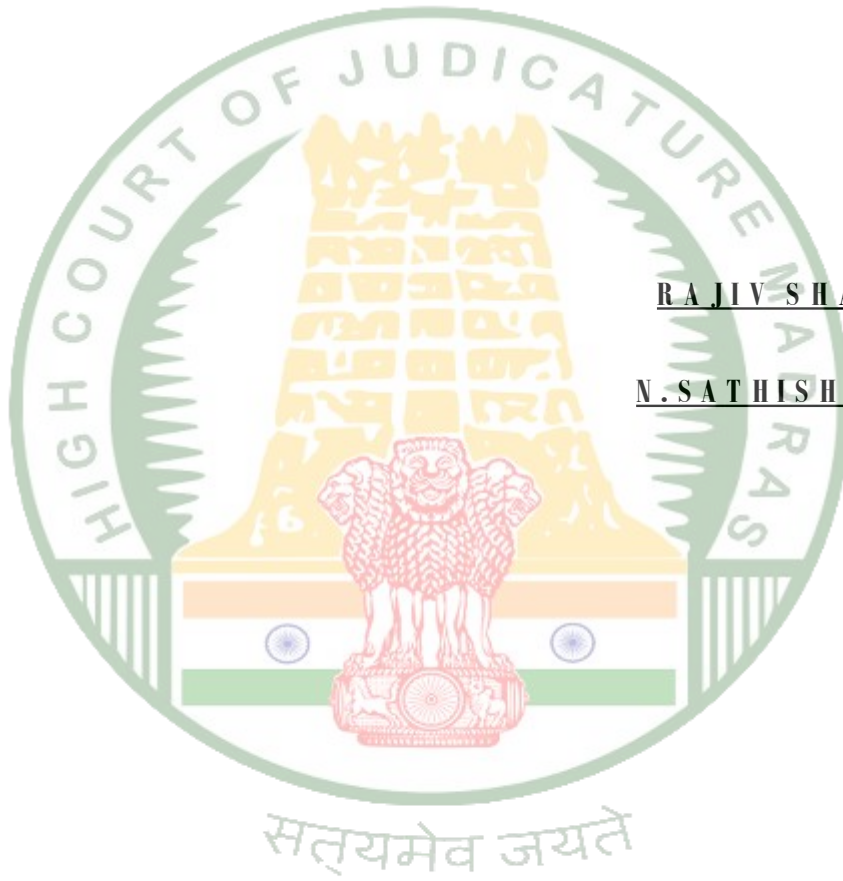
Index : Yes / No
Internet : Yes / No
rkp

Note to office:

1. Issue copy by today itself
2. order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To:

1. The Commissioner of Police,
Office of the Commissioner of police,
Egmore, Chennai.
2. The Principal Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St. George, Chennai- 600 009.
3. The Superintendent,
Special Prison for Women,
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4. The Additional Public Prosecutor,
Madras High Court,
Madras



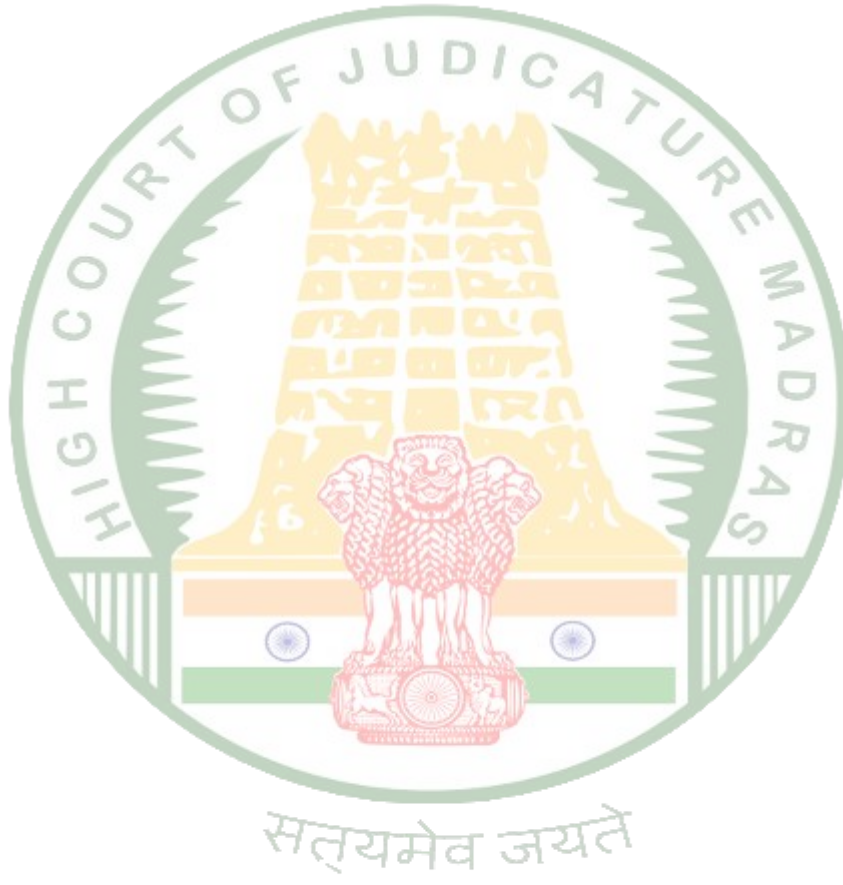
RAJIV SHAKDHER, J.
and
N. SATHISH KUMAR, J.

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