

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1188 of 2017

Usha

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.

2.District Collector and District Magistrate
Vellore District,
Vellore 9.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the records in connection with the order of Detention passed by the second respondent 02.07.2017 in C3.D.O.No.63/2017 against the petitioner husband Viji @ Vijayakumar, male aged 47 years, S/o.Balasundaram, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.V.M.R.Rajentran,

Addl. Public Prosecutor.

ORDER

(Order of the Court was made by **N.SATHISH KUMAR, J**)

The petitioner is the wife of the detenu, namely, Viji @ Vijayakumar, S/o.Balasundaram, male, aged about 47 years. The detenu has been detained by the second respondent by his order in C3.D.O.No.63/2017 dated 02.07.2017, holding him to be a "Bootlegger", as contemplated under 2(b) of 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 representations made by the petitioner was not considered on 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 representations, 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 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 02.07.2017. The petitioner made two representations, dated 02.08.2017 and Nil respectively and the same were received on 08.08.2017 and 10.08.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.08.2017 and 10.08.2017. The remarks were duly received on 23.08.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 11.09.2017.

6. It is the contention of the petitioner that in respect of the first representation there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 9 days in submitting the remarks. In respect of the second representation is concerned there was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 7 days in

submitting the remarks. Thereafter, there was another delay of 19 days in considering the representations, of which 8 days were Government Holidays and hence there was an inordinate delay of 11 days in considering the representations.

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 detenu.

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, in respect of the first

representation is concerned there is an inordinate and unexplained delay of 9 days in submitting the remarks by the Detaining Authority. Insofar as the second representation is concerned there is an inordinate and unexplained delay of 7 days in submitting the remarks by the Detaining Authority and 11 days in considering the representations. 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 in C3.D.O.No.63/2017 dated 02.07.2017, passed by the second respondent is set aside. The detenu, namely, Viji @ Vijayakumar, S/o.Balasundaram, male, aged about 47 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.

सत्यमेव जयते

(R.S.A., J.) (N.S.K., J.)
20.11.2017

Index : yes/no

vsm

Note: Issue order copy today

RAJIV SHAKDHER, J.
and

N.SATHISH KUMAR, J.

vsm

To

1.The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.

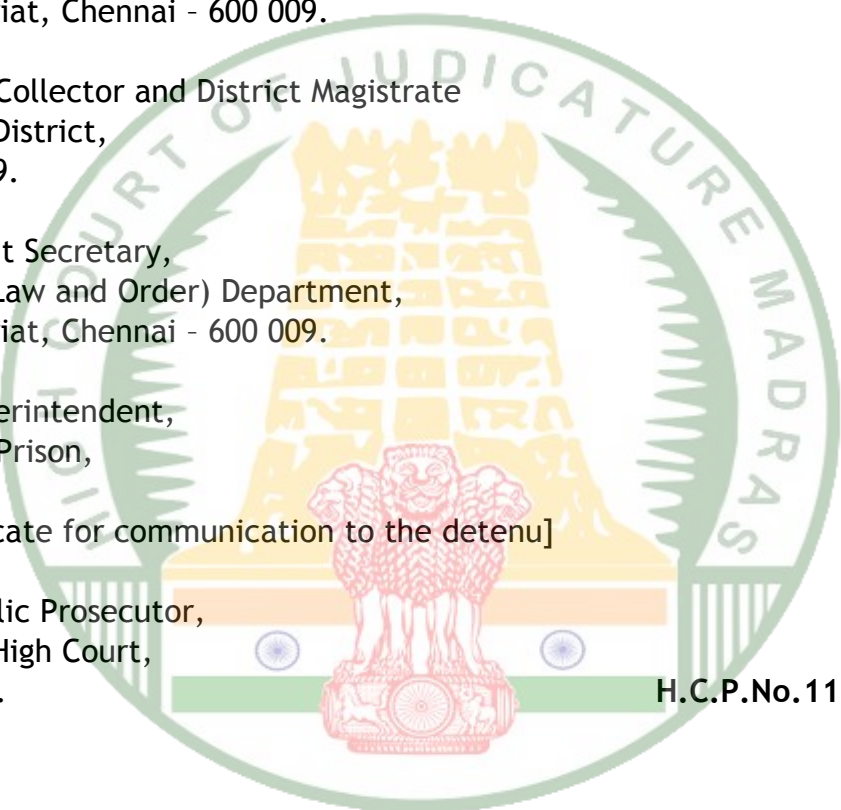
2.District Collector and District Magistrate
Vellore District,
Vellore 9.

3.The Joint Secretary,
Public (Law and Order) Department,
Secretariat, Chennai - 600 009.

4.The Superintendent,
Central Prison,
Vellore.
[In duplicate for communication to the detenu]

5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1188 of 2017

The seal of the Madras High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is set against a green background with a white border. The words "HONORABLE COURT OF JUDICATURE MADRAS" are written in a circular path around the central image. Below the gopuram, there is a red lion capital on a base. At the bottom of the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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