

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2017

Coram

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

H.C.P.No.1215 of 2017

R.Nandhini

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Collector and District Magistrate,
Cuddalore District,
Cuddalore.

... 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 detention order in memo NO.C3/D.O./37/2017 dated 20.06.2017 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to Produce the petitioner's husband Thiru.Ayyar @ Rajasekar, S/o. Saravanan, aged about 32 years the detenu, now confined in Central Prison, Cuddalore before this Hon'ble Court.

For Petitioner : Mr.R.Chakkaravarthy

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor

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O R D E R

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

The petitioner is the wife of the detenu, namely, Ayyar @ Rajasekar, Son of Saravanan, male, aged about 32 years. The detenu has been detained by the second respondent by his order in Memo NO.C3/D.O./37/2017 dated 20.06.2017, holding him to be

a "Goonda", as contemplated under 2(f) 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 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 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 20.06.2017. The petitioner made representations, dated 27.07.2017 & nil and the same were received on 29.06.2017 & 04.07.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.06.2017 in respect of the first representation. Insofar as the second representation is concerned, remarks were called for on 04.07.2017. The remarks were duly received on 11.07.2017 in respect of the first representation. Insofar as the second representation, remarks were duly received on 18.07.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 12.07.2017 & 23.08.2017.

6. It is the contention of the petitioner that in respect of the first representation there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. Insofar as the second representation is concerned there was a delay of 14 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays and hence there was an inordinate delay of 11 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 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, there is an inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority in respect of the first representation. Insofar as the second representation is concerned, there is an inordinate and unexplained delay of 11 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 in Memo NO.C3/D.O./37/2017 dated 20.06.2017, passed by the second respondent is set aside. The detenu, namely, Ayyar @ Rajasekar, Son of Saravanan, male, aged about 32 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.

Sd/--

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nmm/vsm

To

1.State of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Collector and District Magistrate,
Cuddalore District,
Cuddalore.

3.The Superintendent,
Central Prison,
Cuddalore.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort. St.George, Chennai-9.

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

H.C.P.No.1215 of 2017

GN(25/10/2017)



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