

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2017

Coram

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

H.C.P.No.1259 of 2017

Kauveri

... Petitioner

Vs.

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

2.The District Collector and District Magistrate
T.V.Malai,
T.V.Malai District.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in D.O.No.25/2017 C-2 passed by the second respondent on 29.06.2017 set aside the same and direct the respondents to produce the SANTHI wife of Manokaran aged 41 years, who is now detained in Special Prison for Women, Vellore before this Court and set her at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

सत्यमेव जयते
O R D E R

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

The petitioner is the sister-in-law of the detainee, namely, Shanthi, W/o.Manokaran, female, aged about 41 years. The detainee has been detained by the second respondent by his order in D.O.No.25/2017-C-2 dated 29.06.2017, holding her 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 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 detainee 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 29.06.2017. The petitioner made a representation, dated 08.07.2017 and the same was received on 11.07.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.07.2017. The remarks were duly received on 31.07.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.08.2017.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 14 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 detainee 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 14 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 D.O.No.25/2017-C-2 dated 29.06.2017, passed by the second respondent is set aside. The detainee, namely, Shanthi, W/o.Manokaran, female, aged about 41 years, is directed to be released forthwith unless her 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.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

vsm/ggs

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate
T.V.Malai,
T.V.Malai District.
- 3.The Superintendent,
Special Prison for Women,
Vellore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.1259 of 2017

SJ(CO)
sp(09/10/2017)