

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 27.10.2017****CORAM:****THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR****H.C.P.No.1353 of 2017**Mrs.Krishnammal
Petitioner

...

-VS-

1.The Secretary to Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Dept.,
Secretariat,
Fort St.George, Chennai – 600 009.

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

... 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 connected with the order of the 2nd respondent herein in B.C.D.F.G.I.S.S.V.No.63/2017, dated 14.07.2017 passed against the detenu namely Chinnaponnu, wife of Sekar aged about 46 years, who is confined at Special Prison for Women, Puzhal, Chennai – 66 and set aside the same, consequently, directing the respondents herein to produce the body and person of the detenu before this Court and set her at liberty forthwith.

For Petitioner : Mr.A.Murugavel
For Respondents : Mr. V.M.R.Rajentran
Additional Public Prosecutor

ORDER

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

The petitioner is the Mother of the detenu, namely, Chinnaponnu, W/o Sekar, Female, aged about 46 years. The detenu has been detained by the 2nd respondent by his order in B.C.D.F.G.I.S.S.V.No.63/2017, dated 14.07.2017, 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 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 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 14.07.2017. The petitioner made a representation, dated 24.07.2017 and the same was received on 31.07.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day, i.e., on 31.07.2017. The remarks were duly received on 08.08.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.08.2017.

6.It is the contention of the petitioner that there was a delay of 7

days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. Thereafter, there was another delay of 1 day in considering the representation, of which 0 day were Government Holidays, hence, there was another inordinate delay of 1 day in considering the representation.

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 Anbazhagansthan 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 5 days in submitting the remarks by the Detaining Authority and 1 day in considering the representation. 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 B.C.D.F.G.I.S.S.V.No.63/2017, dated 14.07.2017, passed by the 2nd respondent is set aside. The detenu, namely, Chinnaponnu, W/o Sekar, Female, aged about 46 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.

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[R.S.A.,J.] [N.S.K.,J.]
27.10.2017

Index : Yes / No

Internet : Yes / No

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Note to office:

1.Issue order copy by today itself.

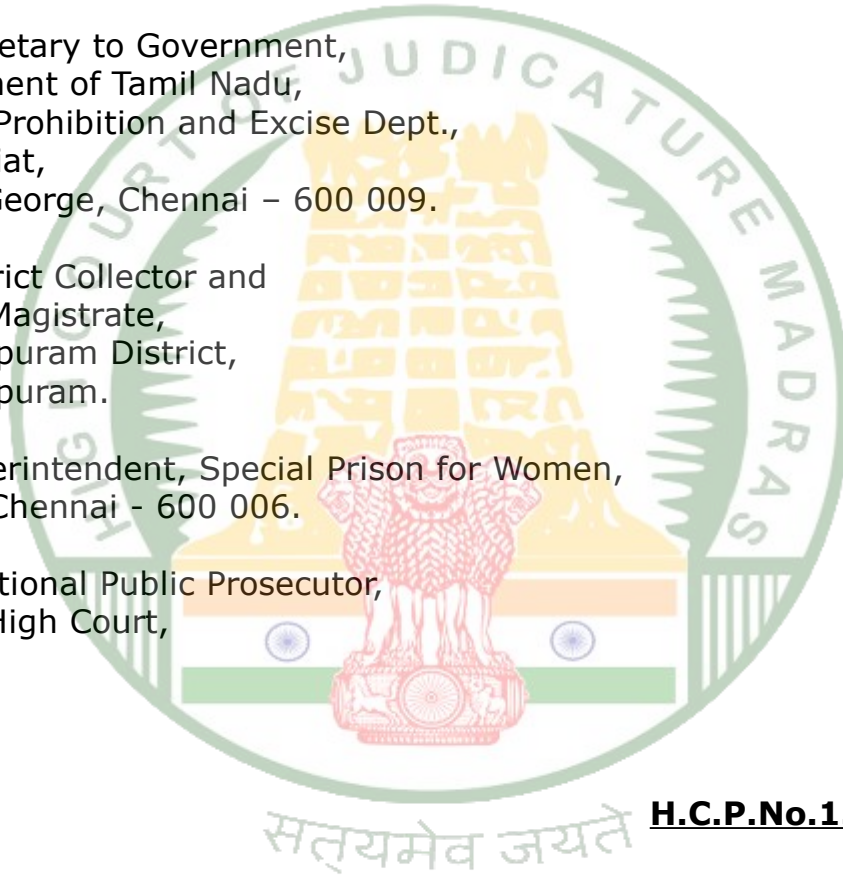
2.Order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

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

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To:

- 1.The Secretary to Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Dept.,
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- 2.The District Collector and
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Kancheepuram District,
Kancheepuram.
- 3.The Superintendent, Special Prison for Women,
Puzhal, Chennai - 600 006.
- 4.The Additional Public Prosecutor,
Madras High Court,
Madras.



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