

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM:

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

H.C.P. No.813 of 2017

Vimala

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep.by its Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,
Salem City
3. The Supreintendent,
Central Prison, Salem-7. ... 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 leading to the detention of petitioner's husband Mohanraj, aged about 29 years, son of Chidambaram, presently detained in Central Prison Salem, under Act 14/1982, as a "Video Pirate" vide the detention order dated 5.5.2017 in C.M.P>No.26/"VIDEO PIRATE" / SALEM CITY/2017 herein, directing to produce the person or body of the Detenu before this Court and set him at liberty from the Central Prison, Salem, by set aside the above order.

For Petitioner : Mr.B. Vasudevan

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

O R D E R

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

The petitioner is the wife of the detenu, namely, Mohanraj, son of Chidambaram, male, aged about 29 years. The detenu has been detained at Central Prison, Salem, as per the Order of the second respondent in C.M.P.No.26/Video Pirate/Salem City/2017,

dated 05-05-2017, holding him to be a "Video Pirate", as contemplated under 2(j) 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 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 05.05.2017. The petitioner made a representation, dated 20.05.2017 and the same was received on 24.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.05.2017. The remarks were duly received on 26.05.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 15.06.2017.

6. It is the contention of the petitioner that there was a delay of 3 days in submitting the remarks by the Detaining Authority.

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 unexplained delay of 3 days in submitting the remarks by the Detaining Authority and 15 days 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 C.M.P.No.26/Video Pirate/Salem City/2017 dated 05.05.2017, passed by the second respondent is set aside. The detenu, namely, Mohanraj, son of Chidambaram, aged about 29 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/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To:

1. Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police, Salem City
3. The Superintendent,
Central Prison, Salem.
(In duplicate for Communication to detenue)
4. The Joint Secretary to Government,
Public(Law & Order)
Fort St.George,
Chennai-9

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

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SK (CO)
NR 09/10/2017



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