

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO
and
The Honourable Mr.Justice ABDUL QUDDHOSE

Habeas Corpus Petition No.2602 of 2016

Antonyammal ...Petitioner/Wife of Detenue

.. Vs ..

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
O/o. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 7. ...Respondents

PETITION under Article 226 of The Constitution of India seeking to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 26.10.2016 in BCDFGISSSV No.1114/2016 against petitioner's husband, the detenu, Sethuraj, S/o.Koil Pillai, aged about 43 years, now confined at Central Prison, Puzhal, Chennai, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Nirmal Kumar

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

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

This writ petition is instituted by the wife of detenu, detained by an order passed by the Commissioner of Police, Greater Chennai, on 26.10.2016 exercising the

power available to him under Sub Section (1) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (henceforth, referred to as, 'the Act, for the sake of brevity). On the same day, the grounds of detention have also been drawn by the Detaining Authority and they were served on the detenu. It will also be important to notice that the detention order in Tamil and the grounds of detention in Tamil were also drawn and served on the detenu on the same day.

2. The grounds of detention make a reference to three criminal cases. The first one relates to Crime No.2401 of 2015 on the file of K.K.Nagar Police Station. It is alleged that the detenu caused death of Tmt.Dhanalakshmi by strangulation on 3rd August 2015. With a view to conceal the body, it is alleged, he has cut it into pieces and packed them in a Box. It is the landlord of the house who lodged the complaint with the police who registered the aforementioned crime. The second relates to Crime No.815 of 2016 on the file of Sankar Nagar police station. It involves lifting of a TVS Excel make motor vehicle indulged in on 04.03.2016 at 16.30 hours. The third one is Crime No.1824 of 2016 on the file of S.5 Pallavaram police station concerning extortion of money by subjecting the individual to threat and creating fear or danger to the life and limb of the said individual.

3. It is fairly well settled principle of law that the preventive detention order is the culmination of subjective satisfaction of the relevant factors by the competent authority. There was never any objective consideration necessary, ordering for preventive detention. Since there is no other remedy available, excepting making a representation to the Advisory Board, the detenu or those acting on his behalf, have no option but to move this Court at the earliest. The procedural requirements and their faithful compliance are the only safety features available against the preventive detention order.

4. In terms of Article 22 (5) of our Constitution, a fair and reasonable opportunity must be afforded to the detenu to make an effective representation against his preventive detention. Any act which tries to stultify this right of the detenu to make an effective

representation against his detention, would render the further detention of the detenu as invalid and unsustainable. In the instant case, the detenu seems to have drawn a representation on 7th December, 2016 and it was received on 8th December, 2016. On the same day, remarks have been called for on the representation which remarks are belatedly submitted on 22nd December, 2016. Though the file was processed by the Under Secretary to Government immediately, it appears, the matter has been placed before the Minister concerned on 23rd December, 2016. But the said representation came to be rejected by an order passed by the Minister only on 30th January, 2017. The order of rejection was communicated to the detenu on 31st January, 2017. Thus, there appears, unexplained delay between 23rd December, 2016 onwards as the said representation has been dealt with only on 30th January, 2017. Thus, the five weeks' time that was taken to deal with the representation remained unexplained by the respondent. When the detenu submits a representation against his preventive detention, it was required to be attended to as expeditiously as possible and a sense of utmost urgency to deal with it, ought to have been shown. Any unexplained delay renders the further detention untenable.

5. The Supreme Court in Rajammal Vs. State of Tamil Nadu and another [(1999) 1 SCC page 417] held that if the delay in dealing with the representation of the detenu was caused on account of indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It was further held that it is not enough to say that the delay was of a short duration. But however, it must be explained by the authority as to why they consumed so much of time to deal with the said representation. In the given circumstances, we are of the opinion that consuming five weeks' time by the Minister for taking a decision on the representation submitted by the writ petitioner, after the file was vetted and submitted for his consideration on 23rd December, 2016, cannot be construed as a fair or reasonable amount of time needed to deal with such a representation. Thus, the delay that has occasioned in dealing with representation of the detenu, clearly rendered his further detention untenable and unjust.

6. For the aforesaid reason, we are of the opinion that the further detention of the detenu pursuant to the order dated 26.10.2016 passed by the second respondent, is unjust and untenable. Hence, the detenu be set forth at liberty immediately.

The Habeas Corpus Petition stands allowed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

JRL

To

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
O/o. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 7.
3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Secretary to Government,
Public (L & O),
Fort St. George, Ch-9

H.C.P.No.2602 of 2016

sr(co)
ss(8/8/2017)