



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P.(MD)No.112 of 2017

M.Syed AliFathima

: Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
MaduraiDistrict.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the the entire records, connected with the detention order of the respondent No.2 in No.07/BCDFGISSSV/2017, dated 20.01.2017 and quash the same as illegal and direct the respondents to produce the body or person of the detenu by name Mohammed Usman Ali, Son of Mohammed Arabi, aged about 32 years, now detained in Madurai Central Prison before this court and set him at liberty forthwith.

For Petitioner

: Mr.I.Sabeer Mohamed

For Respondents

: Mr.C.Ramesh

Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.V.MURALIDARAN, J.]

The petitioner is the wife of the detenu namely Mohammed Usman Ali. The detenu has been detained by the 2nd respondent, by order in No.07/BCDFGISSSV/2017 dated 20.01.2017, holding the detenu to be a "Drug Offender" as contemplated under section 2(e) of the 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 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 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.

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 20.01.2017. The petitioner made a representation on 24.01.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 30.01.2017. The remarks were duly received on 08.02.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 13.03.2017.

6. It is the contention of the petitioner that there was a delay of 21 days in considering the representation of the petitioner by the Detaining Authority.

7. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble 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**, [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**, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any 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 21 days in considering the representation of the petitioner by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the second respondent, in his proceedings No.07/BCDFGISSSV/2017, Dated 20.01.2017 is quashed. The detenu, namely Mohammed Usman Ali, Son of Mohammed Arabi, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

ASSISTANT REGISTRAR (AD-II)

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SUB ASSISTANT REGISTRAR

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Fort St. George, Chennai-9.
2. The Commissioner of Police,
Office of the Commissioner of Police, Madurai City, Madurai.
3. The Superintendent of Prison,
Madurai Central Prison, Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St. George, Chennai-9.

Er/ar

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