



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE **R. SUBBIAH**

AND

THE HONOURABLE MR. JUSTICE **A.D. JAGADISH CHANDIRA**

H.C.P. [MD] No. 1376 of 2017

Durga

: Petitioner

Vs.

1. State of Tamil Nadu,
Rep by its Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai-600 009.

2. The Commissioner of Police,
Office of Commissioner of Police,
Thiruchirapalli City,
Thiruchirapalli.

3. The Superintendent,
Central Prison,
Thiruchirapalli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the proceedings of the second respondent made in his proceedings in Detention Order C.No.33/Detention/C.P.O/T.C/2017 dated 31.08.2017 and quash the same and set her husband by namely "Nari @ Anbalagan, S/o.Murugaiyan" aged about 31 years at liberty from Central Prison, Tiruchirapalli.

For Petitioner : Mr.M.M.Karunanithi

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor

O R D E R

[Order of the Court was made by **R. SUBBIAH, J.**]

The present Habeas Corpus Petition has been filed by the wife of the detenu - Nari @ Anbalagan, S/o.Murugaiyan aged about 31 years. The detenu has been detained, as per the order of the



second respondent dated 31.08.2017 in Detention Order C.No.33/Detention/C.P.O/T.C/2017, under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

WEB COPY

2. We have heard the learned counsel for the petitioner and the learned State Public Prosecutor appearing for the respondents. We have also perused the records carefully.

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 violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

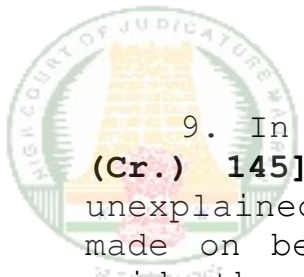
4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, no prejudice has been 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 31.08.2017. As against the same, the petitioner made a representation on 03.09.2017. The remarks were called for by the Government from the Detaining Authority on nil. The remarks were received on 14.09.2017. Thereafter, the Government considered the issue and passed the order rejecting the representation on 28.09.2017. It is the contention of the petitioner that there was delay of 9 days on the part of the Government in considering the same.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In ***Rekha Vs. State of Tamil Nadu***, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously watched and
<https://hcservices.cemil.gov.in/hcservices/> Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu.



9. 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/detenu would be sufficient to set aside the detention order.

WEB COPY

10. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) **SCC 321**], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 9 working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order C.No.33/Detention/C.P.O/T.C/2017 dated 31.08.2017, is quashed. The detenu, namely, Nari @ Anbalagan, S/o.Murugaiyan aged about 31 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai-600 009.

2. The Commissioner of Police,
Office of Commissioner of Police,
Thiruchirapalli City,
Thiruchirapalli.

3. The Superintendent,
Central Prison,
Thiruchirapalli.

4. The Joint Secretary to Government,
Public (Law & Order)



5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

NS
WEB COPY

VB/SV/MMS/SAR1/10/01/2018/4P/6C

ORDER MADE IN
H.C.P. [MD] .No.1376 of 2017
20.12.2017