



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH  
and  
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.407 of 2017

Arabu Nisha

... Petitioner

-vs-

1.The Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 600 009.

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

3.The Superintendent of Prison,  
Special Prison for Women,  
Madurai.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records, of the impugned order vide Detention Order in H.S.(M). Confdl.No.12/17, dated 02.03.2017 on the file of the 2<sup>nd</sup> respondent and quash the same as illegal and to direct the respondents to produce the detainee Fathima @ Laila Fathima, wife of Raja @ Nagoor Hanifa, aged 42 years now detained at the Special Prison for Women, Madurai, before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.B.Pandiyarajan

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor

O R D E R

**[Order of the Court was made by M.M.SUNDRESH, J.]**

The petitioner is a daughter of the detainee, namely, Fathima @ Laila Fathima, wife of Raja @ Nagoor Hanifa, female, aged about 42 years. The detainee has been detained by the second respondent by his order in H.S.(M).Confdl.No.12/17, dated 02.03.2017, holding him to be a "Drug Offender", as contemplated under 2(e) of Tamil Nadu Habitual Offenders Act, 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.

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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.

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 02.03.2017. The petitioner made a representation, dated 13.03.2017 and the same was received on 15.03.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.03.2017. The remarks were duly received on 03.04.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.05.2017.

6. It is the contention of the petitioner that there was a delay of 19 days in submitting the remarks by the Detaining Authority, of which 7 day were Government Holidays and hence there was an inordinate delay of 12 days in submitting the remarks. Thereafter, there was another delay of 44 days in considering the representation, of which 14 days were Government Holidays, hence, there was another inordinate delay of 30 days 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 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 inordinate and unexplained delay of 12 days in submitting the remarks by the Detaining Authority and 30 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 H.S.(M).Confdl.No.12/17, dated 02.03.2017, passed by the second respondent is set aside. The detainee, namely Fathima @ Laila Fathima, wife of Raja @ Nagoor Hanifa, Female, aged about 42 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(AE)

/Truecopy/

Sub Assistant Registrar

To:

1.The Principal Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai - 600 009.

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

3.The Superintendent of Prison,  
Special Prison for Women,Madurai.

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

Ls/am

MAS/KP/SAR2:18.08.2017:3P-5C

H.C.P.(MD) No.407 of 2017  
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