



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2017

CORAM:

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

H.C.P.(MD) No.612 of 2017

Saraswathi

... Petitioner

-vs-

1.State of Tamil Nadu, rep. by its
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

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

3.The Jailor of Prison,
Central Prison,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the second respondent in Cr.M.P.No.9/2017, dated 01.03.2017 and quash the same and direct the respondents to produce the body or person of the Detenu namely Muniyasamy, S/o. Chinnadurai aged about 35 years (now detained at Central Prison, Madurai) before this Court and set him at liberty.

For Petitioner : Mr.Thamimul Ansari

For Respondents : Mr.T.Mohan

Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu, namely, Muniyasamy, Son of Chinnadurai, male, aged about 35 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.9/2017, dated 01.03.2017, holding him to be a "Sand Offender", as contemplated under 2(gg) of Tamil Nadu Act 14 of 1982. This 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.

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.

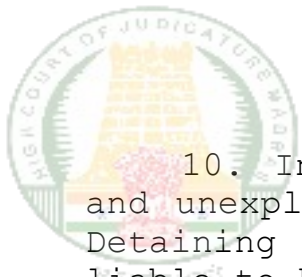
5. The Detention Order in question was passed on 01.03.2017. The petitioner made a representation, dated 06.03.2017 and the same was received on 09.03.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.03.2017. The remarks were duly received on 17.03.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 21.03.2017.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 6 days in submitting the remarks.

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 an 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 6 days in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.9/2017, dated 01.03.2017, passed by the second respondent is set aside. The detenu, namely, Muniyasamy, Son of Chinnadurai, Male, aged about 35 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To:

- 1.The Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
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Virudhunagar.
- 3.The Jailor of Prison,
Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.N.Thamimul Ansari, Advocate, SR.No.72766

H.C.P.(MD) No.612 of 2017
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