



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

CORAM:

WEB COPY

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

H.C.P.(MD) No.675 of 2017

Sivasami

... Petitioner

-vs-

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

2.The District Magistrate and District Collector,
O/o. The District Collector,
Virudhunagar.

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

4.The Inspector of Police,
Srivilliputhu Town Police Station,
Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order in Cr.M.P.No.15/2017 dated 08.04.2017 on the file of the Respondent No.2 and quash the same and direct the respondents to produce the body and person of the petitioner's wife namely Indira, W/o.Sivasami, aged 50 years, now confined at Special Prison for Women, Madurai before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.M.A.Jinnah

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 the husband of the detenu, namely, Indira, wife of Sivasami, aged 50 years. The detenu has been detained by the respondent by his order in Cr.M.P.No.15/2017, dated 08.04.2017, holding him to be a "Drug Offender", as contemplated

under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing 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 08.04.2017. The petitioner made a representation, dated 04.05.2017 and the same was received on 08.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.05.2017. The remarks were duly received on 24.05.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 15.06.2017.

6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holidays and hence there was an inordinate delay of 11 days in submitting the remarks. Thereafter, there was another delay of 31 days in considering the representation, of which 8 days were Government Holidays, hence, there was another inordinate delay of 23 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 11 days in submitting the remarks by the Detaining Authority and 23 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 Cr.M.P.No.15/2017, dated 08.04.2017, passed by the second respondent is set aside. The detenu, namely, Indira, wife of Sivasami, aged 50 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Prinicpal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Magistrate and District Collector,
O/o. The District Collector,
Virudhunagar.
- 3.The Superintendent of Prison,
Special Prison for women, Madurai.
- 4.The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 6.The Joint Secretary to Government,
Public (Law and Order), Fort Saint George, Chennai-9
cp/vsn
RL/7C/3P/SV/MMS/SAR1/27/9/2017

H.C.P. (MD) No.675 of 2017