



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 06.11.2017

CORAM:

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

**AND**

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

H.C.P(MD) No.766 of 2017

Dhanalakshmi

: Petitioner

Vs.

1.The State represented by  
The Commissioner of Police,  
Thiruchirappalli City,  
Thiruchirappalli.

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

3.The State represented by,  
The Superintendent of Prison,  
Central Prison,  
Thiruchirappalli.

: Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records from the first respondent in C.No.16/Detention/C.P.O/T.C/2017, dated 15.05.2017 by setting aside the said order of detention passed by the 1<sup>st</sup> Respondent and setting the detenu by name, Dhanasekaran, son of Chandran, aged about 33 years detained in the Central Prison, Thiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner : Mr.V.Kathirvelu,  
Senior Counsel  
For Mr.K.Prabhu

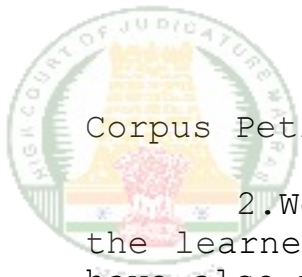
For Respondents : Mr.C.Ramesh  
Additional Public Prosecutor.

**O R D E R**

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

The petitioner is the wife of the detenu, namely, Dhanasekaran, son of Chandran, aged about 33 years. The detenu has been detained by the first respondent by his order in C.No.16/Detention/C.P.O/T.C/2017, dated 15.05.2017, holding him to be a "second" as contemplated under Section 2(f) 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 for the petitioner and the learned Additional Public Prosecutor 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 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. We have considered the above submissions.

6. In this case, The Detention Order was passed on 15.05.2017. As against the same, the petitioner made a representation dated 26.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority. The remarks were duly received on 30.05.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 16.06.2017. It is the contention of the petitioner that there was a delay of 10 days on the part of the Government in considering the representation.

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 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.

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 would be sufficient to set aside the

<https://hccrecords.gov.in/>

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 very detention illegal.

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 10 working days and therefore, the impugned detention order is liable to be quashed.

12. At this juncture, the learned Additional Public Prosecutor by filing a counter affidavit submitted that there are 46 cases registered against the detenu, out of which, he was acquitted in 13 cases, in 11 cases, he has been facing the trial and the balance 22 cases are under investigation. Thus he opposed the Habeas Corpus petition.

13. Though it is submitted by the learned Additional Public Prosecutor that several cases are pending against the detenu, in the Detention order, only three cases were referred and there was no reference about the balance 33 cases. Therefore, there is no need to give any significance to the submission of the learned Additional Public Prosecutor.

14. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the first respondent, in his proceedings in C.No.16/Detention/C.P.O/T.C/2017, dated 15.05.2017, is quashed. The detenu, namely, Dhanasekaran, S/o.Chandran, aged about 33 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 (RTI)

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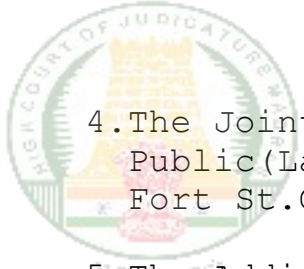
Sub Assistant Registrar

To

1.The Commissioner of Police,  
Thiruchirappalli City,  
Thiruchirappalli.

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

3.The Superintendent of Prison,  
Thiruchirappalli.



4.The Joint Secretary to Government,  
Public(Law & Order),  
Fort St.George, Chennai-9.

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

H.C.P (MD) No.766 of 2017  
Dated:06.11.2017

RM  
KK/SV MMS/SAR 2/17.11.2017/ 4P- 6C