



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.790 of 2017

D.Pandiyammal

... Petitioner

-vs-

1. The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector and
District Magistrate,
Ramanathapuram District,
Ramanathapuram.
3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.
4. The Inspector All Women Police Station,
Thiruvadanai Police Station,
Thiruvadanai, Ramanathapuram District,
Ramanathapuram.

... 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 detention order of the second respondent in confidential Cr.M.P.No.04/S.O/2017 dated 19.01.2017 and quash the same and direct the respondent to produce the body or person of the detenu Dharmalingam, S/o.Karuppaiah, aged about 45 years at Central Prison, Madurai before this Hon'ble Court and set him liberty forth with.

For Petitioner : Mr.S.C.Heroldsingh

For Respondents : Mr.T.Mohan
Additional Public Prosecutor

**ORDER**

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

The petitioner is the wife of the detenu, namely, Dharmalingam, Son of Karuppaiah, male, aged about 45 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.04/S.O/2017, dated 19.01.2017, holding him to be a "Sexual Offender", as contemplated under 2(ggg) 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 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 19.01.2017. The petitioner made a representation, dated 31.01.2017 and the same was received on 07.02.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.02.2017. The remarks were duly received on 17.02.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.02.2017.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. Thereafter, there was another delay of 6 days in considering the representation, of which 2 days were Government Holidays, hence, there was another inordinate delay of 4 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 8 days in submitting the remarks by the Detaining Authority and 4 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.04/S.O/2017 dated 19.01.2017, passed by the second respondent is set aside. The detenu, namely, Dharmalingam, Son of Karuppaiah, Male, aged about 45 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

1. The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector and
District Magistrate,
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Ramanathapuram.
3. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.



4. The Inspector All Women Police Station,
Thiruvadanai Police Station,
Thiruvadanai, Ramanathapuram District,
Ramanathapuram.

WEB COPY

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

6. The The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai -600 009.

7. The Superintendent,
Central Prison, Madurai

+1cc to Mr.S.C.Heroldsingh, Advocate Sr.No.72100

CP/AKV

VB/SKN/SAR1/24.08.2017/4P/9C

H.C.P. (MD) No.790 of 2017
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