



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P(MD)No.1224 of 2016

Leelavathi

... Petitioner

Vs.

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

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.M.P.No.15/2016, dated 31.08.2016, in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely, Pugalanthi, son of Periyasamy, male, aged about 22 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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

**ORDER**

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

The petitioner is the mother of the detenu, aged about 22 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.15/2016, dated 31.08.2016, holding him to be a "Goonda", 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 appearing for the respondents. We have also perused the records produced by the Detaining Authority.

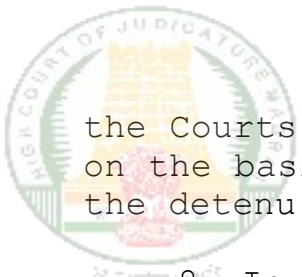
3. Though several grounds have been raised in the Habeas Corpus Petition, the learned Counsel for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned Counsel, by placing authorities, submitted 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 appearing for the respondents 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 31.08.2016. The petitioner made a representation dated 07.09.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.09.2016. The remarks were duly received on 15.11.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 21.12.2016.

6. It is the contention of the petitioner that there was a delay of 42 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 24 days in considering the representation.

7. In ***Rekha Vs. State of Tamil Nadu*** reported in **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.

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 42 days in submitting the remarks by the Detaining Authority and 24 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.15/2016, dated 31.08.2016, passed by the second respondent is set aside. The detenu, namely, Pugalanthi, son of Periyasamy, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

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

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.



4. The Joint Secretary to Govt. Public (L & O)
Fort. St. George, Chennai -9

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

+1cc to Mr.K.M.Karunakaran, Advocate Sr.No.50582

RSB

VB/SV/MMS/18.04.2017/4P/7C

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