



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM:

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

H.C.P.(MD) No.1256 of 2016

Senthamilselvi

... Petitioner

-vs-

1.State of Tamil Nadu
rep.by the Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-9

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

3.The Superintendent
Central Prison, Trichirappalli

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records in detention order passed in P.D.No.28/2016, dated 10.09.2016, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son, namely, Vadivalagan, son of Madhavan, male, aged about 25 years, who is detained in Central Prison, Tiruchirappalli, before this Court.

For Petitioner : Mr.K.A.S.Prabhu

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

O R D E R

[Order of the Court by T.S.SIVAGNANAM, J.]

<https://hcservices.eprints.gov.in/hcservices/>
The petitioner is the mother of the detenu, namely, Vadivalagan, son of Madhavan, aged about 25 years. The detenu has



been detained by the second respondent by his order P.D.No.28/2016, dated 10.09.2016, 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 appearing for the petitioner would mainly focus his arguments on the grounds that there is a delay in considering the petitioner's representation and there is non-application of mind in passing the impugned detention order, which would vitiate the detention.

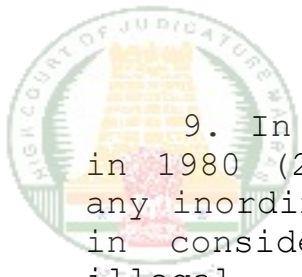
4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been 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 10.09.2016. The petitioner made a representation on 15.09.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.09.2016. However, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.09.2016.

6. It is the contention of the petitioner that there was a delay of 07 days in considering the representation, of which 02 days were Government Holidays and hence, there was an inordinate delay of 05 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.

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10. In the subject case, admittedly, there is an inordinate and unexplained delay of 05 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. The other ground on which the impugned order of detention is put under challenge is non-application of mind.

12. The Detaining Authority was aware that the detenu had moved bail application before the Principal Sessions Court, Thanjavur, in CrI.M.P.No.2610 of 2016, in connection with the ground case and the same was dismissed on 16.08.2016 and further he moved second bail application before the same Court in CrI.M.P.No.2842 of 2016, on 23.08.2016. When it was admitted that the second bail application was pending, the Detaining Authority has stated in the impugned order of detention that there is a real and imminent possibility of the petitioner coming out on bail by filing a bail application before the Higher Court. Thus, it is clear that though the Detaining Authority was aware that the bail application was pending, the observation has been made as if the detenu is likely to file bail application before the Higher Court and coming out on bail. This very issue was considered by this Court in *Lakshminarayanan v. Secretary to the Government*, reported in (2014) 2 MLJ (CrI) 173, wherein on identical facts, the order of detention was quashed on the ground of non-application of mind. For all these reasons, the impugned detention order passed by the second respondent is liable to be quashed.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.28/2016, dated 10.09.2016, passed by the second respondent is set aside. The detenu, namely, Vadivalagan, son of Madhavan, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar



To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
Thanjavur District, Thanjavur.
- 3.The Superintendent,
Central Prison, Trichirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law and Order), Fort Saint George,
Chennai-1

+One cc to Mr.K.A.S.Prabhu, Advocate, SR.No.17495

krk

RL/7C/4P/MR/SAR2/10.4.2017

H.C.P.(MD) No.1256 of 2016
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