



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2017

CORAM:

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

H.C.P. (MD) No.1432 of 2016

Jothilingam

... Petitioner

-vs-

1.The State of Tamil Nadu
rep.by Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009

2.The District Magistrate and District Collector
Virudhunagar District
Virudhunagar

3.The Superintendent
Special Prison for Women
Madurai

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

... 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, connected with the detention order of the second respondent, in Cr.M.P.No.15/2016, dated 14.10.2016 and quash the same and direct the respondents to produce the detinue, by name, Shanmugakani, wife of (Late) Ponnukalai, aged about 56 years, detained in Special Prison for Women, Madurai before this Court and set her at liberty forthwith.

For Petitioner : Mr.S.Mahendrapathy

For Respondents : Mr.T.Mohan

Addl. Public Prosecutor



O R D E R

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

The petitioner is the son of the detenu - Shanmugakani, wife of (Late) Ponnukalai, aged about 56 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.15/2016, dated 14.10.2016, 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 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 14.10.2016. The petitioner made a representation on 24.10.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 26.10.2016. The remarks were duly received on 03.11.2016. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.12.2016.

6. It is the contention of the petitioner that there was a delay of 08 days in submitting the remarks by the Detaining Authority, of which 02 days were Government Holidays and hence there was an inordinate delay of 06 days in submitting the remarks. Thereafter, there was another delay of 53 days in considering the representation, of which 18 days were Government holidays, hence, there was another inordinate delay of 35 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 06 days in submitting the remarks by the Detaining Authority and 35 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 14.10.2016, passed by the second respondent is set aside. The detenu, namely, Shanmugakani, wife of (Late) Ponnukalai, aged about 56 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To:

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

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

3.The District Magistrate and District Collector,
Virudhunagar District,
Virudhunagar.



4.The Superintendent,
Special Prison for Women,
Madurai.

5.The Inspector of Police,
Sivakasi Town Police Station,
Sivakasi, Virudhunagar District.

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

+1 CC TO MR.S.MAHEANDRAPATHY,ADVOCATE,SR NO.51620

skm/krk

MAS/MR:20.04.2017:4P-8C

H.C.P. (MD) No.1432 of 2016
10.04.2017