



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2017

WEB COPY

CORAM:

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

H.C.P(MD)No.1544 of 2016

Pushpalatha

: Petitioner

Vs.

1.The Secretary to the Government,
The State of Tamil Nadu,
Home (Prohibition and Excise) Department,
Secretariat, Chennai-600009.

2.The District Collector -cum- District Magistrate,
Kanyakumari District at Nagercoil.

3.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

4.The Superintendent,
Central Prison,
Palayamkottai.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to direct the third respondent to produce the body of the Petitioner husband, namely Jenson Muthuraj, aged 44 years, Son of Rajarethinam, Vettukkauvilai, Paloor, Karungal Post, Kanyakumari District, now detained as TPDA No.5097 at the Central Prison Palayamkottai, in pursuant to the Orders of the second respondent in PD No.57 of 2016 dated 01.09.2016, to quash the said detention order and to set him at liberty from the Prison.

For Petitioner : Mr.A.Dennisan

For Respondents : Mr.C. Ramesh

Additional Public Prosecutor.



O R D E R

WEB COPY[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

The petitioner is the wife of the detenu, aged about 44 years. The detenu has been detained by the second respondent by his order in P.D.No.57 of 2016, dated 01.09.2016, 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 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 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 01.09.2016. The petitioner made a representation dated 12.09.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.09.2016. The remarks were duly received on 23.11.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 23.11.2016.

6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority.

7. In **Rekha Vs. State of Tamil Nadu, [2011 (5) SCC 274]**, 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, [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, [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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 15 days in submitting the remarks by the Detaining Authority and therefore, the impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the second respondent, in his proceedings in P.D.No.57 of 2016, dated 01.09.2016, is quashed. The detenu, namely, Jension Muthuraj, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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

Sd/-

Assistant Registrar(RTI)

/True Copy/

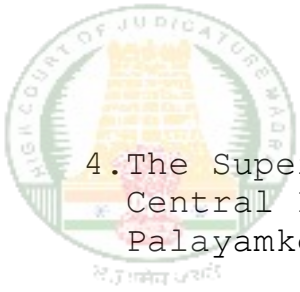
Sub Assistant Registrar

To

1. The Secretary to the Government,
The State of Tamil Nadu,
Home (Prohibition and Excise) Department,
Secretariat, Chennai-600009.

2. The District Collector -cum- District Magistrate,
Kanyakumari District at Nagercoil.

3. The Inspector of Police,
Karungal Police Station,
Kanyakumari District.



4.The Superintendent,
Central Prison,
Palayamkottai.

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

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

SMS

VB/JC/SAR3/12.04.2017/4P/7C

ORDER MADE IN
H.C.P (MD) No.1544 of 2016
Dated:27.03.2017