

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.05.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE S.RAMATHILAGAM

H.C.P.No.114 of 2018

Muthulakshmi ..Petitioner/Wife of Detenu
vs.

- 1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Salem District, Salem. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling upon the production of the records relating to the detention order dated 22.12.2017 made in detention order in C.M.P.No.69/SAND OFFENDER/C2/2017 under section 2(gg) of the Tamil Nadu Act.14/1982 as a "SAND OFFENDER" passed by the 2nd respondent herein quash the same and direct the respondents to produce the body of the detenu Thiru.Mariappan son of Chinna Kolanthai who is aged 45 years who has been detained in Central prison, Salem before this Hon'ble Court and set at liberty.

For petitioner : M/s.M.Senthilkumar

For Respondents: M/s.R.Ravichandran, GA (Crl Side)

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM.,J)

The order of detention has been issued by the 2nd respondent in proceedings dated 22.12.2017, declaring the detenu as "Sand Offender". There is one adverse case, which was noticed against the detenu and a case was registered in Crime No.12 of 2017 dated 20.01.2017 under Sections 379 IPC r/w. 21(1) Mines and Mineral Development Regulation Act, 1957 on the file of the Inspector of Police, Kolathur Police Station, Salem District.

2. The grounds case also stipulates that the detenu was caught during the sand smuggling in a trailer of tractor. Except the sand smuggling, there is no other case has been registered against the detenu.

3. The learned counsel appearing on behalf of the petitioner, contended that there was an enormous delay in considering the representation submitted on behalf of the detenu. In this regard, the Under Secretary to Government filed a memo, stating that the order of detention was issued in DO No.69 of 2018 dated 22.12.2017 in Salem District. The representation dated 08.01.2018 submitted on behalf of the detenu had been received on 11.01.2018. Thereafter, remarks were called on the files on 11.01.2018, the said remarks were received by the competent authority on 23.02.2018 and the files were submitted for perusal on 26.02.2018. The Under Secretary and the Deputy Secretary, though scrutinized the files on the very same date on 26.02.2018 and there is a delay in granting approval of the files by the Hon'ble Minister. The approval was granted only on 09.03.2018 and thereafter, the order of rejection was prepared and sent to the detenu on 13.03.2018. There is a delay of about 11 days in considering the representation. Thus, such a delay is vital, in respect of the consideration of the representation after passing of the detention order.

4. We are of the considered opinion that the nature of the case, registered against the detenu is in relation to sand smuggling in a trailer of a tractor and one adverse case was noticed against him. This apart, the delay in considering the representation is also a vital factor to be considered for the purpose of releasing the detenu.

5. Considering the facts and circumstances of the case and the nature of the allegations set out in the ground case, we are inclined to consider the present Habeas Corpus Petition. Accordingly, the order of detention passed by the 2nd respondent in detention order in CMP.69/ SANDOFFENDER/C2/2017 dated 22.12.2017 is quashed. Hence, the Habeas Corpus Petition stands allowed. The detenu is set at liberty, if he is otherwise not required in any other case.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kak/rka

To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Salem District, Salem.
- 3.The Superintendent, central Jail, Salem.
4. The Joint Secretary to Government,
Public (law & Order), fort saint George, chennai 9
5. The Director General of Police,
Chennai 4
6. The Additional Director General of Police,
Law and order, Chennai 4.
- 7.The Public Prosecutor
High Court, Madras.

H.C.P.No.114 of 2018

vg ii(CO)
TR(09/05/2018)



WEB COPY