

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No.1139 of 2018

M.Kirubavathy

... Petitioner

-Vs-

1. State rep. by
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Kancheepuram,
Kancheepuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention B.C.D.F.G.I.S.S.S.V.NO.35/2018 dated, 31.05.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Masilamani, S/O.Kuppan, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

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ORDER

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the wife of the detenu herein, viz.Masilamani, Son of Kuppan, aged 40 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.35/2018, dated 31.05.2018, holding him to be a "SAND OFFENDER", as contemplated under Section 2(gg) of

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). The said order is under challenge in this Habeas Corpus Petition.

2. The ground case has been registered against the detenu in Cr.No.151/2018 on the file of the Inspector of Police, Thirukalukundram Police Station, for offences u/s 294(b), 353, 307, 506(ii) IPC r/w 3(i) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 r/w 21(i) Mines & Minerals Act. The detention order has been passed by second respondent in B.C.D.F.G.I.S.S.V.No.35/2018.

3. We have heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority and counter affidavit filed by second respondent.

4. 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.

5. 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.

6. The Detention Order in question was passed on 31.05.2018. The petitioner made a representation, dated 08.06.2018 and the same was received on 12.06.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 20.06.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.06.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 8 days in submitting the remarks by the

Detaining Authority, of which 3 days were Saturdays and Sundays and Government holiday and hence there was yet another delay of 5 days in submitting the remarks. Thereafter, there was yet another delay of 6 days in considering the representation, of which 2 days were Saturdays and Sundays and hence there was yet another delay of 4 days in considering the representation.

8. 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.

9. 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.

10. 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 5 days in submitting the remarks by the Detaining Authority and 4 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.35/2018, dated 31.05.2018, passed by the second respondent is set aside. The detenu, namely Masilamani, Son of Kuppan, aged 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

kmi

To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,

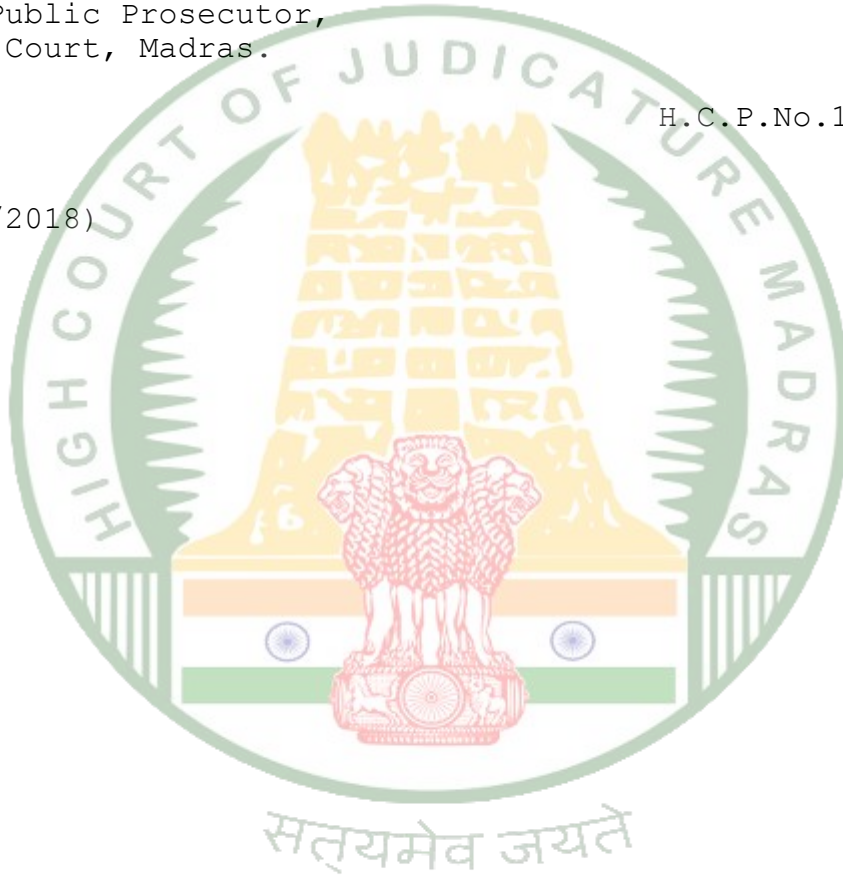
Fort St. George, Chennai - 600 009.

2. The District Collector and District Magistrate,
Kancheepuram, Kancheepuram District.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1139 of 2018

RSK(CO)

GMV(09/11/2018)



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