

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2018

CORAM

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

H.C.P.No.1368 of 2018

Aswini

... Petitioner

Versus

1. The District Collector and District Magistrate,
Cuddalore District,
Cuddalore.

2. The Secretary to the Government
of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of Constitution of India, to issue a Writ of Habeas Corpus calling for the records in C3/D.O./33/2018 on the file of the first respondent, quash the detention order dated 14.06.2018 and direct the production of the detenu Dhanalakshmi wife of Adishesan presently detained at the Special Prison for Women, Vellore under the Tamil Nadu Act, 14 of 1982.

For Petitioner : Mr.A.M.Rahamath Ali

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

ORDER

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

The petitioner is the daughter of the detenu herein, viz. Dhanalakshmi, W/o. Athishesan, aged 55 years. The detenu has been detained by the first respondent by his order in C3/D.O./33/2018, dated 14.06.2018, holding him to be a "Boot Legger" as contemplated under Section 2(b) 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 detenu has come to adverse notice in the following cases:-

S.No.	Police Station and Crime No.	Section of Law
1.	Pudupettai Police Station Crime No.90 of 2017	4 (1) (a) TNP Act
2.	Pudupettai Police Station Crime No.324 of 2017	4 (1) (a) & 4(1-A) TNP Act
3.	Pudupettai Police Station Crime No.383 of 2017	4 (1) (a) & 4(1-A) TNP Act
4.	Pudupettai Police Station Crime No.730 of 2017	4 (1) (k) TNP Act
5.	Pudupettai Police Station Crime No.832 of 2017	4 (1) (k) TNP Act
6.	Pudupettai Police Station Crime No.860 of 2017	4 (1) (k) TNP Act
7.	Pudupettai Police Station Crime No.01 of 2018	4 (1) (k) TNP Act
8.	Pudupettai Police Station Crime No.23 of 2018	4 (1) (k) TNP Act

The ground case has been registered against the detenu in Cr.No.193/2018 on the file of the Pudupettai Police Station, for offences u/s 4(1) (aaa) & 4 (1-A) TNP Act. The detention order has been passed by first respondent in C3/D.O./33/2018.

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 14.06.2018. The petitioner made a representation, dated 05.07.2018 and the same was received on 13.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 06.08.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 10.08.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 33 days in submitting the remarks by the Detaining Authority, of which 8 days were Saturdays and Sundays and hence there was yet another delay of 25 days in submitting the remarks. Thereafter, there was yet another delay of 3 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 25 days in submitting the remarks by the Detaining Authority and 3 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 C3/D.O./33/2018, dated 14.06.2018, passed by the first respondent is set aside. The detenu, namely Dhanalakshmi, W/o. Athiseshan, aged 55 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector and District Magistrate,
Cuddalore District,
Cuddalore.
2. The Secretary to the Government
of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.
3. The Superintendent,
Special Prison for women,
Vellore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

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GSP(17/12/2018)