

IN THE HIGH COURT OF JUDICATUE 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.1399 of 2018

S. Kamatchi

... Petitioner/Wife of the Detenu

Versus

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
 2. The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
Kancheepuram
- ... 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 connected with the order of detention passed by the second respondent 26.06.2018 in D.O.No.26/2018-C2 against the petitioner husband Shanmugam, male aged 47 years S/o.Perumal, who is confined at Central Prison Vellore, set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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

ORDER

The petitioner is the wife of the detenu herein, viz. Shanmugam, Son of Perumal, aged 47 years. The detenu has been detained by the second respondent by his order in 26/2018-C2, dated 26.06.2018, 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 detenu has come to adverse notice in the following cases:-

S.No.	Police Station and Crime No.	Section of Law
1.	Cheyyar Police Station Cr. No.991 /2017	u/s 430, 379 IPC
2.	Cheyyar Police Station Cr. No.131/2018	u/s 21(5) TN MM Act 1957

The ground case has been registered against the detenu in Cr.No.355/2018 on the file of the Anakkavur Police Station, for offences u/s 294(b), 379, 430, 353, 307 IPC r/w 21 (v) Tamil Nadu Mines and Mineral (Development and Regulations) Act, 1957. The detention order has been passed by second respondent in D.O.No.26/2018-C2.

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 26.06.2018. The petitioner made a representation, dated 20.07.2018 and the same was received on 25.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 30.08.2018. Thereafter, the Government considered the matter and

passed the order rejecting the petitioner's representation on 03.10.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 36 days in submitting the remarks by the Detaining Authority, of which 12 days were Saturdays and Sundays and hence there was yet another delay of 24 days in submitting the remarks. Thereafter, there was yet another delay of 34 days in considering the representation, of which 13 days were Saturdays and Sundays and Government Holidays and hence there was yet another delay of 21 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 24 days in submitting the remarks by the Detaining Authority and 21 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 D.O. No.26/2018-C2, dated 26.06.2018, passed by the second respondent is set aside. The detenu, namely Shanmugam, Son of Perumal, aged 47 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

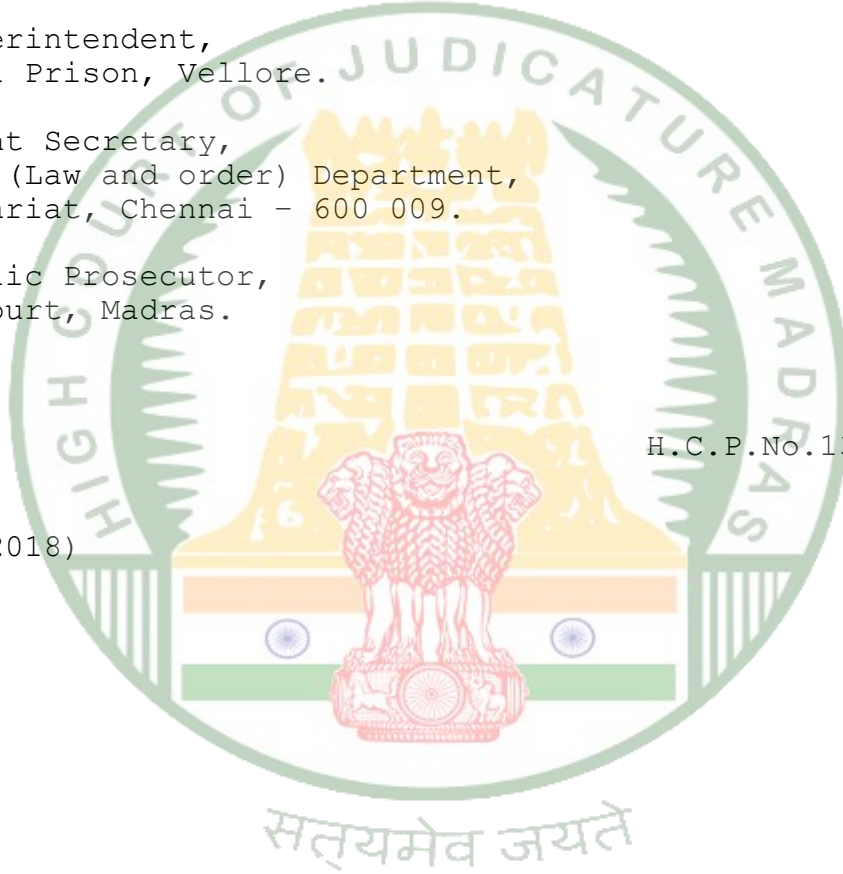
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To:

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
3. The Superintendent,
Central Prison, Vellore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1399 of 2018

SJ(CO)
SP(10/12/2018)



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