IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2018

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2095 of 2017

Vijayalakshmi ... Petitioner

Vs.

1.The Secretary to the Government,
Home Prohibition and Excise Department
Secretariat, Chennai - 600 009.

2.District Collector & District Magistrate
Vellore District
Vellore 9. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records in connection with the order of detention passed by the second respondent dated 14.10.2017 in C3.D.O.No.104/2017 against the petitioner Abishek, male aged 22 years, S/o.Mohanraj who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J)

The petitioner is the mother of the detenu, namely, Abishek, S/o.Mohanraj, male, aged about 22 years. The detenu has been detained by the second respondent by his order in C3/D.O.NO.104/2017 dated 14.10.2017, holding him to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing 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 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 representations made by the petitioner was not considered on time and there was an inordinate and unexplained delay with regard to the same.

4. Though notice in this petition was issued on 10.11.2017, no counter affidavit has been filed by the State. However, the learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representations, 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 14.10.2017. The petitioner made two representations, dated 02.11.2017 and 16.11.2017 and the same were received on 08.11.2017 and 22.11.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.11.2017 and 22.11.2017. The remarks were duly received on 20.11.2017 and 11.12.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 18.12.2017.

6. It is the contention of the petitioner that there was a delay of 12 days and 19 days in submitting the remarks by the Detaining Authority, of which 4 days and 6 days were Government Holidays and hence there was an inordinate delay of 8 days and 13 days in submitting the remarks. Thereafter, there was another delay of 28 days and 7 days in considering the representations, of which 8 days and 2 were Government Holidays and hence there was an inordinate delay of 20 days and 5 days in considering the representations.

7. 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

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activities undertaken by the detenu.

8. 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.

9. 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 8 days and 13 days in submitting the remarks by the Detaining Authority and 20 days and 5 days in considering the representations. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O.No.104/2017 dated 14.10.2017, passed by the second respondent is set aside. The detenu, namely, Abishek, S/o.Mohanraj, male, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Secretary to the Government,
Home Prohibition and Excise Department
Secretariat, Chennai - 600 009.

2.District Collector & District Magistrate
Vellore District
Vellore 9.

3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

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4.The Superintendent,
Central Prison,
Vellore.
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.D.Balaji, Advocate, S.R.No.20

H.C.P.No.2095 of 2017

RR(CO)

RRK(02/01/2018)

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