

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2018

Coram

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

**H.C.P.No.2139 of 2017
and
Crl.M.P.No.201 of 2018**

Rajalakshmi

... Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai 600 009.
2. The Commissioner of Police /Detaining Authority,
City Police Officer,
Huzur Road, Coimbatore City,
Coimbatore-18.

... Respondents

सत्यमेव जयते

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 03.11.2017, on the file of the second respondent herein made in proceedings Memo C.No.65/G/15/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely

V.Sankar Raja @ raja, S/o.Vellaisamy, aged 35 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioners : Mr.S.Senthilvel

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

ORDER

[Order of the Court was made by SATHISH KUMAR, J.]

**CrI.M.P.No.201 of 2018
in H.C.P.No.2139 of 2017**

1. For the reasons given in the petition, the prayer made in the petition is allowed.

2. With the consent of the learned Additional Public Prosecutor, the main petition is taken up for hearing, today itself.

H.C.P.No.2139 o2017

WEB COPY

3. The petitioner is the wife of the detenu, namely, V.Sankar Raja @ Raja, S/o.Vellaisamy, male, aged about 35 years. The detenu has been detained by the 2nd respondent by his order in

C.No.65/G/IS/2017 dated 03.11.2017 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

4. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the record produced by the Detaining Authority.

5. 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 in time and there was an unexplained delay with regard to the same.

6. Notice in this petition was issued on 15.11.2017, despite which, 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 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.

7.The Detention Order in question was passed on 03.11.2017. The petitioner made two representations, dated 10.11.2017 and 05.12.2017 and the same were received on 14.11.2017 and 12.12.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.11.2017 and 14.12.2017. The remarks were duly received on 27.11.2017 and 22.12.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.12.2017 and 28.12.2017.

8.It is the contention of the petitioner that there was an inordinate and unexplained delay of 13 and 8 days in submitting the remarks by the Detaining Authority of which 4 and 2 days were Government Holidays, hence there was another unexplained delay of 9 and 6 days in submitting the Remarks. Thereafter, there was another inordinate and unexplained delay of 22 and 6 days in considering the

representation, of which 7 and 3 days were Government Holidays, hence, there was another inordinate and unexplained delay of 15 and 3 days in considering the representation.

9. 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.

10. 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.

11. 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.

12. In the subject case, admittedly, there is an unexplained delay of 9 and 6 days in submitting the remarks by the Detaining Authority and 15 and 3 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.65/G/IS/2017 dated 03.11.2017 passed by the 2nd respondent is set aside. The detenu, namely, V.Sankar Raja @ Raja, S/o.Vellaisamy, male, aged about 35 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.

[R.S.A.,J.] [N.S.K.,J.]
11.01.2018

Index : Yes / No
Internet : Yes / No

vsm

WEB COPY

Note to office:

Issue order copy by today itself.

RAJIV SHAKDHER, J.
and
N.SATHISH KUMAR, J.

vsm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai 600 009.
2. The Commissioner of Police /Detaining Authority,
City Police Officer,
Huzur Road, Coimbatore City,
Coimbatore-18.
- 3.The Joint Secretary to Government,
Public, Law and Order Department,
Government of Tamil Nadu,
Secretariat, Chennai – 9.
- 4.The Superintendent,
Central Prison,Coimbatore.
[In duplicate for communication to the same]
- 6.The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.2139 of 2017

सत्यमेव जयते

WEB COPY

11.01.2018