IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

H.C.P.No.1560 of 2018

K.Sangeetha

... Petitioner

.. Vs ..

1.State of Tamil Nadu rep by
The Prinicipal Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

2.The District Collector and 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, directing the respondents to produce the petitioner's husband viz., Karthi, son of Palani, aged about 26 years before this Court, now confined in Central Prison, Vellore, and set him at liberty and to call for the records pertaining to the order of detention passed in No.C3/D.O.No.40/2018 dated 12.06.2018 by the 2nd respondent and set aside the same.

For Petitioner : Dr.D.Parthiban
For Respondents: Mr.R.Prathap Kumar
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., Karthi, son of Palani, aged about 26 years. The detenu has been detained by the second respondent by his order in No.C3/D.O.No.40/2018 dated 12.06.2018, holding him to be a "GOONDA", as contemplated under Section 2(f) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law

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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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Veppankuppam P.S.Cr.N 69/2018	147, 148, 294(b), 323,324,506(ii)IPC r/w Sec.3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 and Tamil Nadu Prohibition of Harassment of Woman Act 2002

The ground case has been registered against the detenu in Cr.No.64/2018 on the file of the Anaicut Police Station, for offences under Sections 147, 148 and 302 I.P.C.

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

4. Though several grounds have been raised in the Habeas Corpus Petition, learned counsel for 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. In support of his contention, learned counsel for petitioner relied on the judgment of the Hon'ble Apex Court in the case of Rajammal vs. State of Tamil Nadu, [(1999) 1 SCC 417].

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

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fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

6. The Detention Order in question was passed on 12.06.2018. The representation sent by the petitioner was received on 11.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day i.e., on 11.07.2018. The remarks were duly received on 17.07.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.07.2018 and served on the detenu on 30.07.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Saturday and Sunday and hence there was a delay of 3 days in submitting the remarks. Thereafter, there was yet another delay of 11 days in considering the representation, of which 4 days were Saturdays, Sundays and Government Holidays and hence there was yet another delay of 7 days in considering 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.

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11. In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in submitting the remarks by the Detaining Authority and 7 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

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12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.C3/D.O.No.40/2018 dated 12.06.2018 passed by the second respondent is set aside. The detenu, namely Karthi, son of Palani, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jas/Jrl

To:

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Vellore District,
Vellore - 9.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison,
Vellore.

+1cc to Dr.D.Parthiban, Advocate sr.no.77729

H.C.P.No.1560 of 2018

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