

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2018

Coram

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

H.C.P.No.2183 of 2017

Siranjeevi

... Petitioner

Vs.

1.State of Tamil Nadu

Rep. By its Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.

2.The 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, to call for the entire records relating to petitioner's mother 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 C3.D.O.No.118/2017 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's mother namely Suriya wife of Murugesan, aged 42 years before this Court and set the petitioner's mother at liberty from detention, now petitioner's mother detained at Special Prison for Women, Vellore.

For Petitioner : Mr.C.C.Chellappan

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 son of the detenue, namely, Suriya, W/o.Murugesan, female, aged about 42 years. The detenue has been detained by the second respondent by his order in C3.D.O.No.118/2017, dated 03.11.2017, holding her to be a "Bootlegger", as contemplated under 2(b) of Tamil Nadu Act 14

of 1982. The said order is under challenge in this Habeas Corpus Petition.

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 record 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 were 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 20.11.2017, 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 a 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 detainee 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 03.11.2017. The petitioner made two representations dated 10.11.2017 & 04.12.2017 and the same were received on 14.11.2017 & 06.12.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.11.2017 & 06.12.2017. The remarks were duly received on 20.11.2017 & 12.12.2017. 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 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence, there was a delay of 4 days in submitting the remarks by the Detaining Authority. Thereafter, there was another delay of 28 days & 6 days in considering the representation, of which 8 days & 2 days were Government Holidays and hence there was an inordinate delay of 20 days & 4 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 activities undertaken by the detainee.

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 detainee 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 a delay of 4 days in submitting the remarks by the Detaining Authority and 20 days & 4 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.118/2017, dated 03.11.2017, passed by the second respondent is set aside. The detainee, namely, Suriya, W/o.Murugesan, male, aged about 43 years, is directed to be released forthwith unless her 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-IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vsm

To

1.The Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George, Chennai - 600 009.

WEB COPY

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

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

4.The Superintendent,
Special Prison for Women,
Vellore.
[in duplicate for communication to the detenue]

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

H.C.P.No.2183 of 2017

RSI (CO)
TR(05/01/2018)



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