

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM:

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

H.C.P.No.1638 of 2018

N.Suresh

... Petitioner

-VS-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2. District Collector and District Magistrate,
Erode District, Erode.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent pertaining to the order made in Cr.M.P.No.11/DRUG OFFENDER/2018/C1 dated 05.07.2018 in detain the detenu under 2 (b) of Tamil Nadu Act 14 of 1982, as a Drug Offender and quash the same and direct the respondent to produce the detenu Rasammal @ Palaniammal, W/o. (Late) Nataraj, aged about 52 years, who is detained at Special Prison for Women, Coimbatore before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.G.Nirmalkrishnan

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the son of the detenu herein, viz., Rasammal alias Palaniammal, Wife of (Late) Nataraj, aged 52 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.11/DRUG OFFENDER/2018/C1, dated

05.07.2018, holding him to be a "DRUG OFFENDER", as contemplated under Section 2(e) 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 & Crime No.	Section of Law
1.	Erode North Police Station Crime No.399/2016	20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act 1985
2.	Erode North Police Station Crime No.220/2017	20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act 1985
3.	Erode North Police Station Crime No.637/2017	20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act 1985

The ground case has been registered against the detenu in Cr.No.341/2018 on the file of the Sub-Inspector of Police, Erode North Police Station for offences u/s. 387, 506(ii) IPC and Section 8(c) read with 20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act. The detention order has been passed by second respondent in Cr.M.P.No.11/DRUG OFFENDER/2018/C1 on 05.07.2018.

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.

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 05.07.2018. The petitioner made a representation, dated 07.08.2018 and the same was received on 16.08.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.08.2018. The remarks were duly received on 29.08.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.09.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 9 days in submitting the remarks by the Detaining Authority, of which 3 days were Saturdays, Sundays and Government Holiday and hence there was a delay of 6 days in submitting the remarks. Thereafter, there was yet another delay of 30 days in considering the representation, of which 10 days were Saturday, Sunday and Government Holidays and hence there was a delay of 20 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority and 20 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 Cr.M.P.No.11/DRUG OFFENDER/2018/C1, dated 05.07.2018, passed by the second respondent is set aside. The detenu, namely, Rasammal alias Palaniammal, Wife of (Late) Nataraj, aged 52 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. District Collector and District Magistrate,
Erode District, Erode.
3. The Superintendent,
Special Prison for Women,
Coimbatore.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1638 of 2018

GSP (02/01/2019)

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