IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2410 of 2017

Kavitha
... Petitioner/Wife of Detenue

-Vs-

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

2.The District Collector and
District Magistrate,
Villupuram District, Villupuram.
... 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 order of detention C2/32388/2017 dated, 18.11.2017 passed by the 2nd respondent and to quash the same and also to direct the detenu Thiru.Dhinesh Alias Dheepan Sakkaravarthi, S/O.Venkatesan, who is presently detained in the Central Prison, Cuddalore to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.D.Padmanabhan

For Respondents: Mr.V.M.R.Rajentran
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 detenu herein, viz., Dhinesh @ Dheepan Sakkaravarthi, son of Venkatesan, aged 23 years. The detenu has been detained by the second respondent by his order in No.C2/32388/2017, dated 18.11.2017, holding him to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14

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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.	Cr.No. & Police Station	Offences
1.	Cr.No.1161/2017 Valavanur Police Station	147, 366, 342, 324, 376D IPC r/w 66E, 67, 67A Information Technology Act, 2000.

The ground case has been registered against the detenu in Crime No.1162 of 2017 on the file of Valavanur Police Station for offences u/s 294(b), 323, 341, 506(ii) and 307 IPC. The detention order has been passed by Second respondent in No.C2/32388/2017 on 18.11.2017.

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 18.11.2017. The petitioner made a representation, dated 13.12.2017 and the same was received on 14.12.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 08.01.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 12.01.2017.

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7. It is the contention of the petitioner that there was a delay of 25 days in submitting the remarks by the Detaining Authority, of which 10 days were Saturdays and Sundays and Government holidays, hence, there was an inordinate delay of 15 days in submitting the remarks. Thereafter, there was yet another inordinate delay of 4 days in considering the 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 15 days in submitting the remarks by the Detaining Authority and 4 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 No.C2/32388/2017, dated 18.11.2017, passed by the second respondent is set aside. The detenu, namely, Dhinesh @ Dheepan Sakkaravarthi, son of Venkatesan, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

kmi

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To

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

2.The District Collector and
District Magistrate,
Villupuram District, Villupuram.

3.The Superintendent,
Central Prison,
Cuddalore.

4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George,
Chennai-9

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Padmanabhan, Advocate sr.no.13612

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sr(co)
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