

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2018

Coram

THE HON'BLE MR.JUSTICE C.T.SELVAM
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2459 of 2017

Indhirani

... Petitioner

Vs.

1. State of Tamilnadu, rep. by
The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in Memo No.BCDEFGISSV No.102/2017 dated 07.12.2017 on the file of the second respondent herein to set aside the same and direct the respondents to produce the detenu i.e., the body of Soundari @ Soundarya W/o.Jayakumar, female, aged about 30 years, the detenu detained under Act 14 of 1982 in detention order Mem No.BCDEFGISSV No.102/2017 dated 07.12.2017 herein now confined in Special Prison for Women, Puzhal, Chennai - 600 066 before this Court and set her at liberty.

For Petitioner : Mr.D.Gopi Krishnan

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor.

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O R D E R
(Order of the Court was made by N.SATHISH KUMAR, J.)

The petitioner is the wife of the detenu, namely, Soundari @ Soundarya Wife of Jayakumar, aged about 30 years. The detenu has been detained by the second respondent by his order in No.B.C.D.F.G.I.S.S.S.V. No.102/2017, dated 07.12.2017 holding

him to be a "Bootlegger", as contemplated under Section 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 records 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 representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay with regard to the same.

4. 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.

5. The Detention Order in question was passed on 07.12.2017. The petitioner made representations dated 20.12.2017, 20.12.2017 and 27.11.2017 and the same were received on 21.12.2017, 26.12.2017 and 10.01.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.12.2017 and 10.01.2018. The remarks were duly received on 29.12.2017, 26.12.2017 and 19.01.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation 12.01.2018, 28.12.2017 and 31.01.2018.

6. It is the contention of the petitioner that there was an unexplained delay of 7, 7 and 8 days, of which 3, 3 and 4 days were Government Holidays and hence there was an unexplained delay of 4 days in submitting the remarks by the Detaining Authority in all the representations. Thereafter, another unexplained delay of 13, 2 and 11 days, of which 5, -, 5 days were Government Holidays and hence there was an unexplained delay of 8, 2 and 6 days in considering the representation.

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 detenu.

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 detenu 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 an unexplained delay of 4 days in submitting the remarks by the Detaining Authority in all the representations and unexplained delay of 8, 2 and 6 days in considering the representation. 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 No.B.C.D.F.G.I.S.S.S.V. No.102/2017, dated 07.12.2017, passed by the second respondent is set aside. The detenu, namely, Soundari @ Soundarya Wife of Jayakumar, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS II)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

vrc

To

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

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

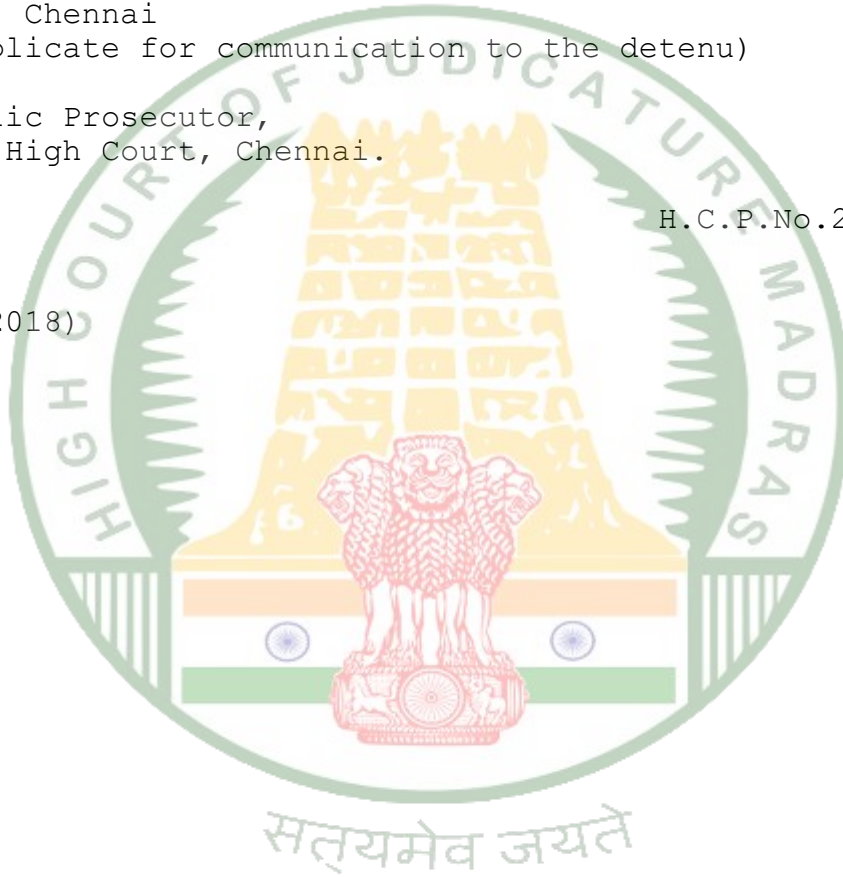
3.The Joint Secretary to Government
Public Law and Order Department
Government of Tamil Nadu
Fort St. George, Chennai-9.

4.The Superintendent,
Special Prison for Women,
Puzhal, Chennai
(In duplicate for communication to the detenu)

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

H.C.P.No.2459 of 2017

KS (CO)
GN(27/03/2018)



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