

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P.No.1785 of 2018

Inbamani Petitioner/Wife of the Detenu

.. Vs ..

The State Represented by its

1. The Secretary to the Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
 2. The District Collector and District Magistrate,
Office of the District Collector,
Cuddalore District.
- Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus calling for the records pertaining to the order of detention dated 06.08.2018 passed by the second respondent in No.C3/D.O./50/2018 and quash the same and produce the detenu Pushbanathan @ Koiyapazham S/o. Samidurai, aged about 24 years, before this Court and set him at liberty and the detenu now confined at Central Prison, Cuddalore.

For Petitioner : Mr.D.Mario Johnson
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 wife of the detenu herein, viz., Pushbanathan @ Koiyapazham, aged about 23 years, S/o. Samidurai. The detenu has been detained by the second respondent by his

order in No.C3/D.O./50/2018, dated 06.08.2018, holding him to be a "SAND OFFENDER", as contemplated under Section 2(gg) 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.	Pudupettai Police Station Cr.No.127 of 2013, Dated 04.04.2013	Section 21(1) of Mines and Minerals (Development and Regulation) Act 1957.
2.	Pudupettai Police Station Cr.No.79 of 2016, Dated 13.03.2016	Sections 294(b), 324, 354, 506(ii) IPC @ Sections 294(b), 323, 324, 352 and 506(ii) IPC r/w. Section 4 of Tamil Nadu Prevention of Women Harassment Act.
3.	Pudupettai Police Station Cr.No.215 of 2016, Dated 19.06.2016	Sections 379, 430 IPC r/w. Section 21(1) of Mines and Minerals (Development and Regulation) Act 1957.

The ground case has been registered against the detenu in Cr.No.393/2018 by the Inspector of Police, Panruti Police Station, for offences under Sections 294(b), 353, 430, 379 and 307 IPC r/w. Section 21(1) of Mines and Minerals (Development and Regulation) Act 1957.

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

6. The Detention Order in question was passed on 06.08.2018. The petitioner made a representation, dated 20.08.2018 and the same was received on 24.08.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.08.2018. The remarks were duly received on 11.10.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 15.10.2018 and served on the detenu on 16.10.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 41 days in submitting the remarks by the Detaining Authority, of which 18 days were Saturday and Sunday and Government Holidays and hence there was a delay of 23 days in submitting the remarks. Thereafter, there was yet another delay of 3 days in considering the representation, of which 2 days were Saturdays, Sundays and Government Holidays and hence there was yet another delay of 1 day 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 23 days in submitting the remarks by the Detaining Authority and 1 day 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.C3/D.O./50/2018, dated 06.08.2018 passed by the second respondent is set aside. The detenu, namely Pushpanathan @ Koiyapazham, aged about 24 years, S/o. Samidurai, 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

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To

1. The Secretary to the Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector,
Cuddalore District.
3. The Superintendent of Central Prison,
Cuddalore.
4. The Joint Secretary to Government
Public (Law & Order)
Fort St George, Chennai-9
5. The Public Prosecutor,
High Court,
Madras.

nr 20/12/2018

H.C.P.No.1785 of 2018