

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No.647 of 2018

N.Sundari

... Petitioner

-Vs-

1.The District Collector cum District Magistrate,
Cuddalore, Cuddalore District.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of the first respondent dated 13.03.2018 in C3/D.O./12/2018 detaining the detenu K.Arumugham, S/o. Kaliyaperumal, aged 37 years, as Bootlegger under Tamil Nadu Act 14/1982 and set aside the same and direct the respondents to produce the said detenu now detained in the central Prison Cuddalore, before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.P.Prabhuraj
for Mr.R.Srinivas

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 sister of the detenu herein, viz., Arumugam, son of Kaliyaperumal, aged 37 years. The detenu has been detained by the first respondent by his order in C3/D.O/12/2018, dated 13.03.2018, holding him to be a "BOOTLEGGER", as contemplated under Section 2(b) 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.	Cr.No. & Police Station	Offences
1.	Cr.No.699 of 2017 Cuddalore O.T. Police Station	4(1)(aaa), 4(1-A) & 14A TNP Act
2.	Cr.No.979 of 2017 Cuddalore P.E.Wing Police Station	4(1)(aaa) and 4 (1-A) TNP Act
3.	Cr.No.99 of 2018 Cuddalore P.E.Wing Police Station	4(1)(aaa) and 4 (1-A) TNP Act
4.	Cr.No.91 of 2018 Chidambaram P.E.Wing Police Station	Sec.4(1)(aaa), 4(1-A) & 14A TNP Act

The ground case has been registered against the detenu in Cr.No.158/2018, on the file of Inspector of Police, P.E. Wing, Cuddalore, for offenses u/s 4(1)(aaa), 4(1-A) r/w 14A TNP Act (Transport). The detention order has been passed by first respondent in C3/D.O/12/2018.

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 13.03.2018. The petitioner made a representation, dated 26.03.2018 and the same was received on 28.03.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 11.05.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.05.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 44 days in submitting the remarks by the Detaining Authority, of which 15 days were Saturdays and Sundays and Government holidays and hence there was an inordinate delay of 29 days in submitting remarks. Thereafter, there was yet another delay of 5 days, in considering the representation, of which 2 days were Saturdays and Sundays and hence there was an inordinate delay of 3 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 29 days in submitting the remarks by the Detaining Authority and 3 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 C3/D.O/12/2018, dated 13.03.2018, passed by the first respondent is set aside. The

detenu, namely, Arumugam, son of Kaliyaperumal, aged 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

bkn/kmi

To:

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

+1cc to Mr.R. Srinivas, Advocate SR.No.56372

सत्यमेव जयते

H.C.P.No.647 of 2018

GMV (14/09/2018)

WEB COPY