

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM:

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

H.C.P.No.1892 of 2018

Ammu ... Petitioner/Mother of the detenu

... Vs ...

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

2.The Commissioner of Police/
Detaining Authority,
Greater Chennai,
Chennai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the second respondent in No.684/BCDFGISSSV/2018, dated 10.08.2018 and quash the same thereby direct the detenu Mr.Sivadhasan @ Prabhu @ Nattamai Prabhu son of Ramachandran lodged in Central Prison, Puzhal, Chennai, to be produced before this Court and set the detenu at liberty.

For Petitioner : Mr.V.Jeevagiridharan

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

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ORDER

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

The petitioner is the mother of the detenu herein, viz., Sivadhasan @ Prabhu @ Nattamai Prabhu, aged about 25 years Son of Ramachandran. The detenu has been detained by the second respondent by his order in No.684/BCDFGISSSV/2018, dated 10.08.2018, holding him to be a "GOONDA", as contemplated under

Section 2(f) 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.	H-6 R.K. Nagar Police Station Crime No.460/2015	341, 294(b), 324, 307 & 506 (ii) IPC
2.	H-6 R.K. Nagar Police Station Crime No.1109/2015	147, 148, 341, 294 (b), 353, 324, 307 & 506(ii) IPC
3.	H-6 R.K. Nagar Police Station Crime No.360/2018	147, 148, 341, 294 (b), 323, 336, 427, 307 & 506(ii) IPC
4.	H-6 R.K. Nagar Police Station Crime No.776/2018	147, 148, 341, 294 (b), 323, 324, 307 & 506(ii) IPC

The ground case has been registered against the detenu in Cr.No.778/2018 on the file of H.6 R.K.Nagar Police Station, for offences under Sections 341, 294(b), 323, 336, 427, 392, 397 and 506 (ii) IPC

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 10.08.2018. The petitioner made a representation, dated 03.09.2018 and the same was received on 04.09.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 04.09.2018. The remarks were duly received on 07.09.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.10.2018 and served on the detenu on 04.10.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 2 days in submitting the remarks by the Detaining Authority. Thereafter, there was yet another delay of 22 days in considering the representation, of which 9 days were Saturdays, Sundays and Government Holidays and hence there was yet another delay of 13 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 2 days in submitting the remarks by the Detaining Authority and 13 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.684/BCDFGISSSV/2018, dated 10.08.2018, passed by the second respondent is set aside. The detenu, namely Sivadhanan @ Prabhu @ Nattamai Prabhu, Son of

Ramachandran, aged about 25 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

Jr1

To:

- 1.The Secretary,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police/
Detaining Authority,
Greater Chennai,
Chennai.
- 3.The Superintendent of Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9

सत्यमेव जयते

H.C.P.No.1892 of 2018

GN(22/01/2019)

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