

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.671 of 2018

Irulayi

... Petitioner

-Vs-

1. State of Tamil Nadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records, relating to petitioner maternal sister in law's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 13.03.2018 on the file of the second respondent herein made in proceedings BCDFGISSSV No. 144/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's maternal sister in law namely Manjula, wife of Selvam, aged 38 years before this Court, who is now confined at Special Prison for Women, Puzhal, Chennai and set at liberty.

For Petitioner : Mr.C.C.Chellapan

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 maternal sister in law of the detinue herein, viz., Manjula, wife of Selvam, aged 38 years.

The detainee has been detained by the second respondent by his order in BCDFGISSSV No.144/2018, dated 13.03.2018, holding her to be a "DRUG OFFENDER", as contemplated under Section 2(e) 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 detainee has come to adverse notice in the following cases:-

S.No.	Cr.No. & Police Station	Offences
1.	Cr.No.1260 of 2017 S-8 Adambakkam Police Station	8(c) r/w, 20(b) (ii) (A) of NDPS Act
2.	Cr.No.1544 of 2017 S-8 Adambakkam Police Station	8(c) r/w, 20(b) (ii) (A) of NDPS Act
3.	Cr.No.1549 of 2017 S-8 Adambakkam Police Station	8(c) r/w, 20(b) (ii) (A) of NDPS Act

The ground case has been registered against the detainee in Cr.No.104 of 2018 on the file of Inspector of Police, S-8 Adambakkam Police Station for offences u/s 8(c) r/w, 20(b) (ii) (A) of NDPS Act. The detention order has been passed by second respondent in BCDFGISSSV No.144/2018.

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 detainee 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 23.03.2018 and the same was received on 27.03.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 02.04.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 09.04.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 6 days in submitting the remarks by the Detaining Authority, of which 4 days were Saturdays and Sundays and Government Holidays and hence there was an inordinate delay of 2 days in submitting remarks. Thereafter, there was yet another delay of 6 days, in considering the representation, of which 2 days were Saturdays and Sundays and hence there was an 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 rigor cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detainee.

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 detainee 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 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 BCDFGISSSV No.144/2018, dated 13.03.2018, passed by the second respondent is set aside. The detainee, namely, Manjula, wife of Selvam, aged 38 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bkn/kmi

To:

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007.
3. The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

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RG(CO)

rrs 18/09/2018