

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.9 of 2018

Sathiya

... Petitioner

-Vs-

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

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

... 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 detention made in No.C2/36058/2017 dated 15.12.2017 passed by the District Collector and District Magistrate, Villupuram District, Villupuram the second respondent herein, and set aside the same and direct the respondents to produce the detinue before this Court and set the detinue Thirumathi. Dhanalakshmi, wife of Kaliyaperumal, aged 43 years, who is now confined in Special Prison for Women, Vellore at liberty.

For Petitioner : Mr.R.Balakrishnan

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 daughter of the detinue herein, viz., Dhanalakshmi, wife of Kaliyaperumal, aged 43 years. The detinue has been detained by the second respondent by his order in No.C2/36058/2017, dated 15.12.2017, holding her to be a "Bootlegger", as contemplated under Section 3(2) 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. 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.

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.

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 15.12.2017. The petitioner made a representation, dated 30.12.2017 and the same was received on 02.01.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 18.01.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 22.01.2018.

6. It is the contention of the petitioner that there was a delay of 16 days in submitting the remarks by the Detaining Authority, of which 6 days were Saturdays and Sundays and Government holidays and hence there was an inordinate delay of 10 days in submitting the remarks. Thereafter, there was yet another delay of 3 days in considering the representation, of which 2 days were Saturdays and Sundays, hence, there was another inordinate delay of 1 day 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 inordinate and unexplained delay of 10 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.C2/36058/2017, dated 15.12.2017, passed by the second respondent is set aside. The detenu, namely, Dhanalakshmi, wife of Kaliyaperumal, aged about 43 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS II)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

kmi

To

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

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

3.The Joint Secretary
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

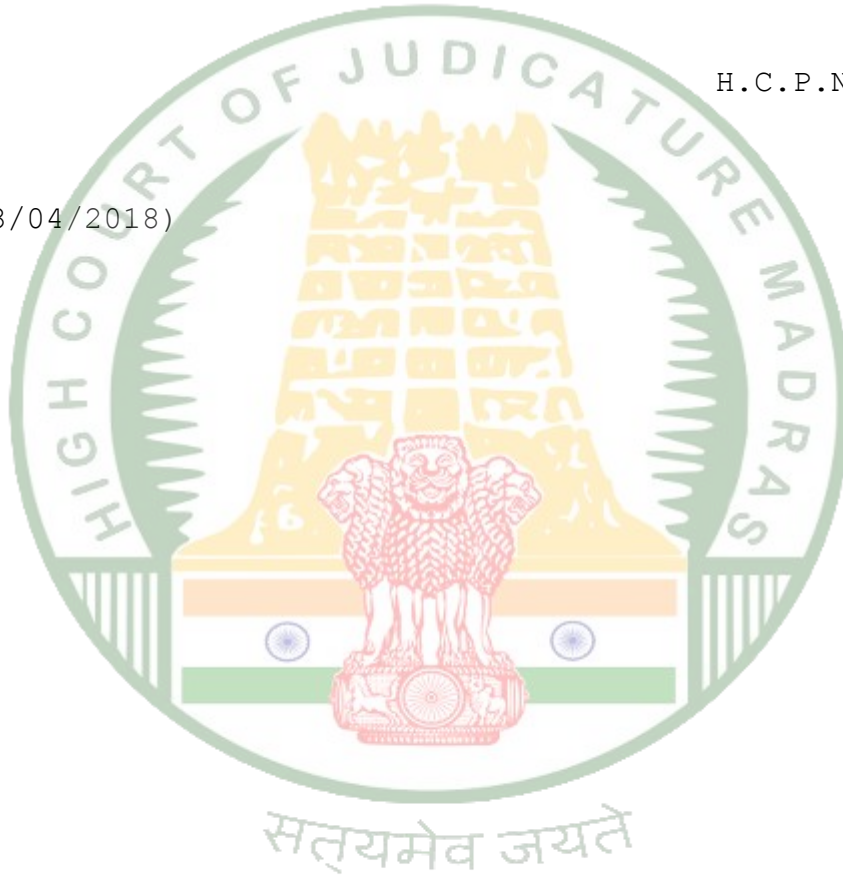
4.The Superintendent,
Special Prison for Women,
Vellore.

(In duplicate for Communication to Detenue)

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.9 of 2018

GP(CO)
GN(13/04/2018)



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