

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

AND

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P.No.2279 of 2018

Nagalakshmi

...

Petitioner/detenuue

.. Vs ..

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
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 in connection with the order of Detention passed by the the second respondent dated 14.09.2018 in No.834/B.C.D.F.G.I.S.S.S.V./2018, the petitioner Nagalakshmi, Female, Aged 40 wife of Ravi, who is confined at Special Prison for Women, Puzhal, Chennai, and set aside the same and consequently direct the respondents to produce the detenuue before this Court and set her at liberty.

For Petitioner : Mr.M.Muralidharan

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 detenuue viz., Nagalakshmi, Female, Aged 40 years wife of Ravi. The detenuue has been detained by the second respondent by his order in No.834/B.C.D.F.G.I.S.S.S.V./2018, dated 14.09.2018 holding her to be a "Immoral Traffic Offender", as contemplated under Section 2(g) 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 detinue has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Anti Vice Squad - I, Crime No.75/2014	3(2) a, 4(1) & 5(1) a of ITP Act.

The ground case has been registered against the detinue in Cr.No.104/2018 on the file of the Anti Vice Squad Police Station, for offences under Sections 3(2) a, 4(1) & 5(1) a, 6(1) & 7(1) of ITP Act.

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 detinue 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 14.09.2018. The petitioner made a representation, dated 25.10.2018 and the same was received on 30.10.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 30.10.2018. The remarks were duly received on 02.11.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.12.2018 and served on the detinue on 04.12.2018.

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 27 days in considering the representation, of which 10 days were Saturdays, Sundays and Government Holidays and hence there was yet another delay of 17 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 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 17 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.834/B.C.D.F.G.I.S.S.S.V./2018, dated 14.09.2018, passed by the second respondent is set aside. The detainee, namely Nagalakshmi, Female, Aged 40 years, wife of Ravi, is directed to be released forthwith unless her detention is required in connection with any other case.

सत्यमेव जयते Sd/-

Deputy Registrar

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Sub Assistant Registrar

Jr1

To:

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

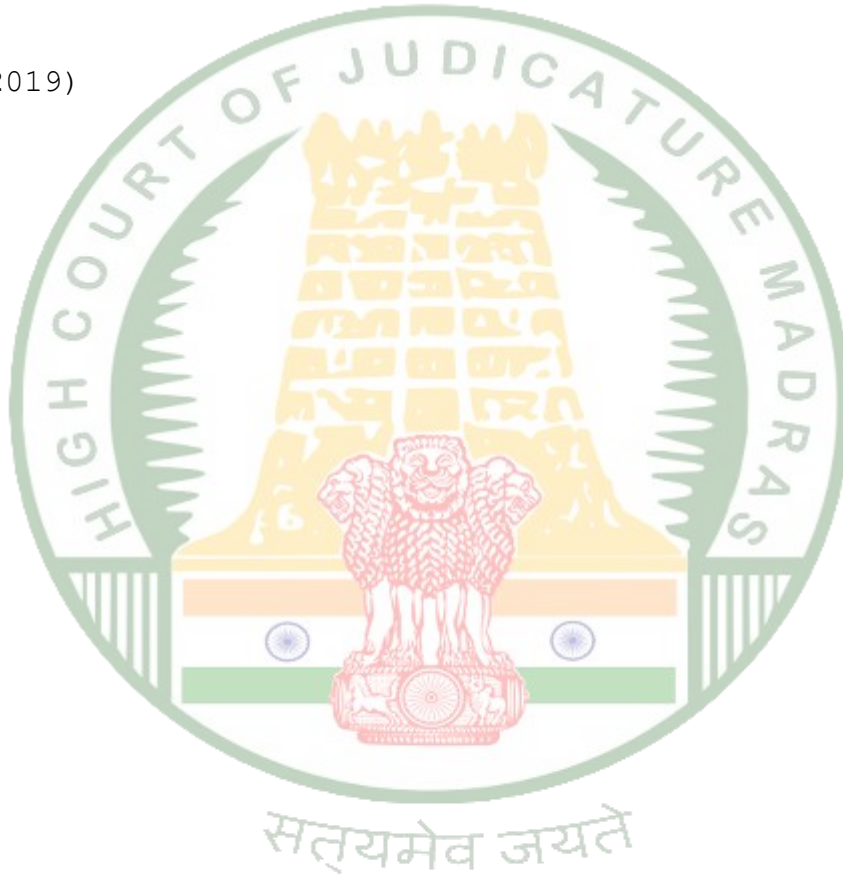
2.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Superintendent of Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2279 of 2018

GN(23/01/2019)



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