



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.04.2018
CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.377 of 2018

V.Kaliyammal ... Petitioner
Vs.

- 1.State of Tamil Nadu, rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of Police,
O/o. The Commissioner of Police,
Madurai City.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in No.01/BCDFGISSSV/2018 dated 04.01.2018 on the file of the 2nd Respondent herein and set aside the same as illegal and direct the Respondents to produce the body or person of the Petitioner's son namely Maniraja, S/o. Veluchamy, Male, aged about 22 years, who is detained in Central Prison, Madurai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Ramar

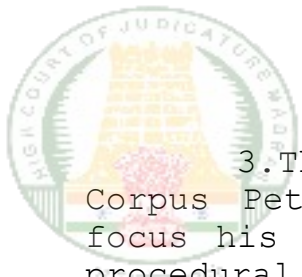
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor.

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

The petitioner is the mother of the detenu viz., Maniraja, son of Velusamy, aged about 22 years. The detenu has been detained by order in No.01/BCDFGISSSV/2018, dated 04.01.2018, holding him to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

<https://hcservices.ecourts.gov.in/hcservices/> 2.We have heard learned counsel for the petitioner and learned Additional Public Prosecutor 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, learned counsel for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. Learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an unexplained delay.

4. 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 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 04.01.2018. The petitioner made a representation on 19.01.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.01.2018. The remarks were duly received on 29.01.2018. Thereafter, the Government considered the matter and passed the order rejecting the representation on 01.02.2018.

6. It is the contention of the petitioner that there was a delay of one days in submitting the remarks by the Detaining Authority.

7. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble 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*, [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*, [1980 (2) SCC 321], the Hon'ble 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 unexplained delay in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the second respondent, in his proceedings in No.01/BCDFGISSSV/2018, dated 04.01.2018, is quashed. The detenu, namely, Maniraja, son of Velusamy, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.



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12. In the upshot, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of Police,
O/o. The Commissioner of Police,
Madurai City.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort saint George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.A.Ramar, Advocate, SR.No.63385

RL/7C/3P/SV/MMS/SAR1/27/4/2018

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25.04.2018