



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2018

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

HCP [MD].No.1522 of 2017

Lakshmi

: Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Government of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai -9.

2.The Commissioner of Police,
Office of Commissioner of Police,
Thiruchirapalli City,
Thiruchirapalli.

3.The Superintendent,
Central Prison,
Thiruchirapalli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records pertaining to the proceedings of the second respondent made in his proceedings in Detention Order C.No.41/Detention/C.P.O/T.C/2017 dated 12.09.2017 and quash the same and set petitioner's son by namely "Pandiyarajan, S/o.Annadurai" aged about 22 years at liberty from Central Prison, Tiruchirapalli.

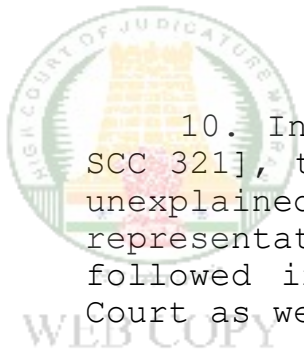
For Petitioner : Mr.M.Karunanithi

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor

ORDER

[Order of the Court was made by **S.VIMALA, J**]

The petitioner is the mother of the detenu viz., Pandiyarajan S/o.Annadurai, aged about 22 years. The detenu has been detained, as per the order of the second respondent, dated 12.09.2017, under Section 12 (1) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.



10. 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 detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. In the decision in JAYANARAYAN SUKUL v. STATE OF WEST BENGAL reported in AIR 1970 SC 675, it has been held that the Government has to be vigilant in the governance of the citizens and that the representation should be considered as early as possible without any delay.

12. If any representation is received prior to passing the order of detention, the four principles are to be followed in letter and spirit, which reads as follows:-

"First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to measure the time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board."

13. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 7 working days in receiving the representation and 4 working days delay on the part of the Government in considering the same and therefore, the impugned detention order is liable to be quashed.

14. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in C.No.41/Detention/C.P.O/T.C/2017, dated 12.09.2017 is quashed. The detenu, namely Pandiyarajan, S/o.Annadurai, aged about 22 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (AD-II)

/True Copy/



1. The Secretary to Government,
Government of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai -9.
2. The Joint Secretary,
Public (Law and Order) Department,
Fort St. George,
Chennai.
3. The Commissioner of Police,
Office of Commissioner of Police,
Thiruchirapalli City,
Thiruchirapalli.
4. The Superintendent,
Central Prison,
Thiruchirapalli.
(in duplicate for communication to the detenu)
5. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
HCP [MD].No.1522 of 2017
25.01.2018

rmi/RR
SDS/SKN:RSK/SAR 1/25.01.2018/4P/7C