



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.10.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1061 of 2018

Jeyamarry

... Petitioner

-vs-

1.State represented by
The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli - 9.

2.The Principal Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat, Chennai - 600 009.

3.The Superintendent,
Central Prison,
Palayamkottai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records from the first respondent in M.H.S. Confdl No.61/2018 dated 04.07.2018 by setting the detenu Jacob, aged 25, S/o. Jeyakumar, at liberty now detained in the Central Prison, Palayamkottai.

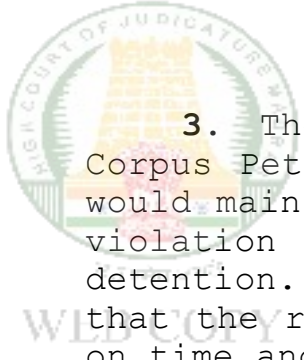
For Petitioner : Mr.K.Prabhu
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the Mother of Jacob, S/o. Jeyakumar, male, aged 25 years, who is the detenu. The detenu has been detained by the first respondent by his order in M.H.S.Confdl No.61/2018 dated 04.07.2018, holding him to be a "GOONDA", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the 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.

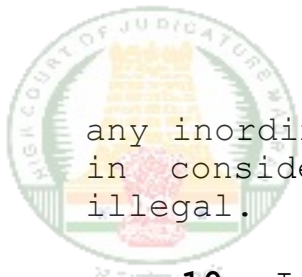
5. The Detention Order in question was passed on 04.07.2018. The petitioner made a representation on 16.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.07.2018. The remarks were duly received on 27.07.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 09.08.2018.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. Thereafter, there was another delay of 9 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Joint Secretary dealt with it, of which 2 days were Government Holidays, hence, there was another inordinate delay of 7 days 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 5 days in submitting the remarks by the Detaining Authority and 7 days 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 M.H.S.Confdl No.61/2018, dated 04.07.2018, passed by the first respondent is set aside. The detenu, namely, Jacob, S/o. Jeyakumar, male, aged 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli - 9.
- 3.The Superintendent,
Central Prison,
Palayamkottai.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.K.PRABHU, ADVOCATE IN SR No. 89550

SJ

TE/PM/SAR-4 : 29/10/2018 : P/C

H.C.P.(MD) No.1061 of 2018
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