



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.10.2018

CORAM:

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

H.C.P. (MD) No.1141 of 2018

Suganya

... Petitioner

-vs-

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

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

3.The Superintendent,
Central Prison, Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the proceedings of the 2nd respondent made in his proceedings in Cr.M.P.No.21/Goonda/2018 dated 06.07.2018 and quash the same and set the petitioner's husband by name "Thangaraj, S/o. Muniyandi, aged about 33 years" at liberty from 3rd respondent custody.

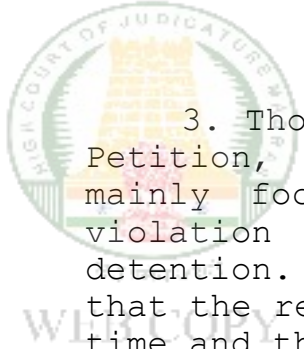
For Petitioner : Mr.M.Jegadeesh Pandian
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of Thangaraj, S/o. Muniyandi, male, aged 33 years, who is the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P.No.21/Goonda/2018 dated 06.07.2018, 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. Despite several opportunities have been given, no counter affidavit has been filed by the respondents. Therefore, the matter is proceeded based on the submissions on either side and the available materials on record.



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 06.07.2018. The petitioner made a representation on 31.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 03.08.2018. The remarks were duly received on 10.08.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 21.08.2018.

6. It is the contention of the petitioner that there was a delay of 10 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 6 days were Government Holidays, hence, there was another inordinate delay of 4 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 4 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

<https://hcservices.ecourts.gov.in/hcservices/>



11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.21/Goonda/2018, dated 06.07.2018, passed by the second respondent is set aside. The detenu, namely, Thangaraj, S/o. Muniyandi, male, aged 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

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

H.C.P.(MD) No.1141 of 2018
23.10.2018

SJ
ES/RP/SAR 4/12.11.2018/3P/6C