



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.1163 of 2018

M.Esakkithai

... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
For St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S. Confdl No.56/2018 dated 19.06.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu i.e., the petitioner's husband namely Mariappan, aged about 36, S/o. Subbaiah Thevar, now detained in the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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 Mariappan, S/o. Subbaiah Thevar, male, aged 36 years, who is the detenu. The detenu has been detained by the second respondent by his order in



M.H.S.Confdl No.56/2018 dated 19.06.2018, 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.

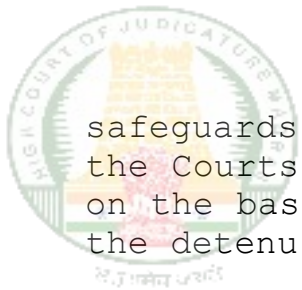
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority. Despite several opportunities have been given, no counter affidavit has been filed by the respondents. 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 19.06.2018. The petitioner made a representation on 23.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 23.07.2018. The remarks were duly received on 13.08.2018. 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 20 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 14 days in submitting the remarks. Thereafter, there was another delay of 7 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 3 days were Government Holidays, hence, there was another inordinate delay of 4 days in considering the representation.



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 14 days in submitting the remarks by the Detaining Authority and 4 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.56/2018, dated 19.06.2018, passed by the second respondent is set aside. The detenu, namely, Mariappan, S/o. Subbaiah Thevar, male, aged 36 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-II)

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
For St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Palayamkottai, Tirunelveli.



4.The The Joint Secretary to Government,
Public (Law and Order),
Fort.Saint George, Chennai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SJ

BU/NM/SKN/SAR-2 :15.11.2018 : 4P/6C

H.C.P. (MD) No.1163 of 2018
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