



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.32 of 2019

Tmt.Selvi

.. Petitioner

Versus

1.State of Tamil Nadu, rep by its
The Secretary to Government
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.

2.The District Collector and
District Magistrate of Vellore
District, Vellore.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent dated 20.12.2018 in his office Ref.C3.D.O.No.112/2018 against the petitioner's husband by name Thiru.Madhu, S/o.Kaliyappan, aged about 40 years, now confined at Central Prison, Vellore, Vellore district and set aside the same and direct the respondents to produce the above said detenue before this Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan

For Respondents: Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of Thiru.Madhu, S/o.Kaliyappan aged 40 years, who is the detenu. The detenu has been detained by the second respondent by his order in office Ref.C3.D.O.No.112/2018 dated 20.12.2018, holding him to be a "Bootlegger", as contemplated under Section 2(b) 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 appearing 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 20.12.2018. The petitioner made a representation on 02.01.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.01.2019. The remarks were duly received on 11.02.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.05.2019.

6. It is the contention of the petitioner that there was a delay of 33 days in receiving the remarks by the Detaining Authority, of which 14 days were Government Holidays and hence there was an inordinate delay of 19 days in submitting the remarks.

7. In *Rekha vs. State of Tamil Nadu* (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* (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 19 days in submitting the remarks by the Detaining Authority. 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 office Ref.C3.D.O.No.112/2018 dated 20.12.2018, passed by the second respondent is set aside. The detenu, namely, Thiru.Madhu, S/o.Kaliyappan, aged about 40 years, now confined at Central Prison, Vellore, Vellore district is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.

2.The District Collector and
District Magistrate of Vellore
District, Vellore.

3.The Public Prosecutor
High Court, Madras.

HCP.No.32 of 2019

RSI (CO)
GMY (21/08/2019)