

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.06.2019

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.57 of 2019

Samiya ... Petitioner
Versus

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 08.12.2018 in Memo no.1119/BCDFGISSV/2018 against the petitioner husband Imran @ Imranudeen, male aged 30 years S/o.Rahimyudeen, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detainee before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil

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

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

The petitioner is the wife of Imran @ Imranudeen, male aged 30 years S/o.Rahimyudeen, who is the detenu. The detenu has been detained by the second respondent by his order in Memo no.1119/BCDFGISSV/2018 dated 08.12.2018, 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 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 08.12.2018. The petitioner made a representation on 18.01.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.01.2019. The remarks were duly received on 24.01.2019. Thereafter, the Deputy Secretary of Home, Prohibition and Excise (XII) Department had dealt with the representation on 24.01.2019 (Column No.12) and the Minister for Electricity & Prohibition and Excise Department dealt with the same on 06.02.2019 (Column No.13). In between column no.12 and column no.13, there was a delay of 12 days in dealing with the said representation and passed the order rejecting the petitioner's representation on 07.02.2019.

6. It is the contention of the petitioner that there was a delay of 12 days in considering the representation by the Government, of which 4 days were Government Holidays and hence there was an inordinate delay of 8 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) MN (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 8 days in dealing with the representation by the Government. 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 Memo no.1119/BCDFGISSV/2018 dated 08.12.2018, passed by the second respondent is set aside. The detenu, namely, Imran @ Imranudeen, male aged 30 years S/o.Rahimyudeen, who is confined at Central Prison, Puzhal II, Chennai, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent,
Central Prison, Puzhal , Chennai

4.The Public Prosecutor
High Court, Madras.

HCP.No.57 of 2019

A.SK(12/07/2019)