

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.26 of 2019

Amirthamary

.. Petitioner

Versus

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

2.The Commissioner of Police/
Detaining Authority,
Huzur Road, Coimbatore City,
Coimbatore -18.

.. 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 entire records, relating to the petitioner's husband detention under Tamil Nadu 14 of 1982 vide detention order, dated 28.12.2018 on the file of the second respondent herein made in proceedings Memo C.No.140/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely P.Thangaraj, S/o.Parthiban, aged 34 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
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 P.Thangaraj, S/o.Parthiban, aged 34 years, who is the detenu. The detenu has been detained by the second respondent by his order in C.No.140/G/IS/2018,

dated 28.12.2018 holding him to be a "Drug Offender", as contemplated under Section 2(e) 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 28.12.2018. The petitioner made representations on 18.01.2019 & 06.02.2019. Thereafter, in respect of the second representation, remarks were called for by the Government from the Detaining Authority on 08.02.2019. The remarks were duly received on 14.02.2019. Thereafter, the Deputy Secretary of Home, Prohibition and Excise (XII) Department had dealt with the representation on 15.02.2019 (Column No.12) and the Minister for Electricity & Prohibition and Excise Department dealt with the same on 30.04.2019 (Column No.13). In between column no.12 and column no.13, there was a delay of 73 days in dealing with the said representation 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 73 days in dealing with the representation by the Deputy Secretary, Home, Prohibition and Excise (XII) Department and the Minister for Electricity & Prohibition and Excise Department, of which 25 days were Government Holidays and hence there was an inordinate delay of 48 days in dealing with the representation.

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 48 days in dealing with the second representation by the authorities of Home, Prohibition and Excise Department. 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 C.No.140/G/IS/2018 dated 28.12.2018, passed by the second respondent is set aside. The detenu, namely, P.Thangaraj, S/o.Parthiban, aged 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

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 Commissioner of Police,
Greater Chennai
Office of Commissioner of Police,
Vepery, Chennai-7.

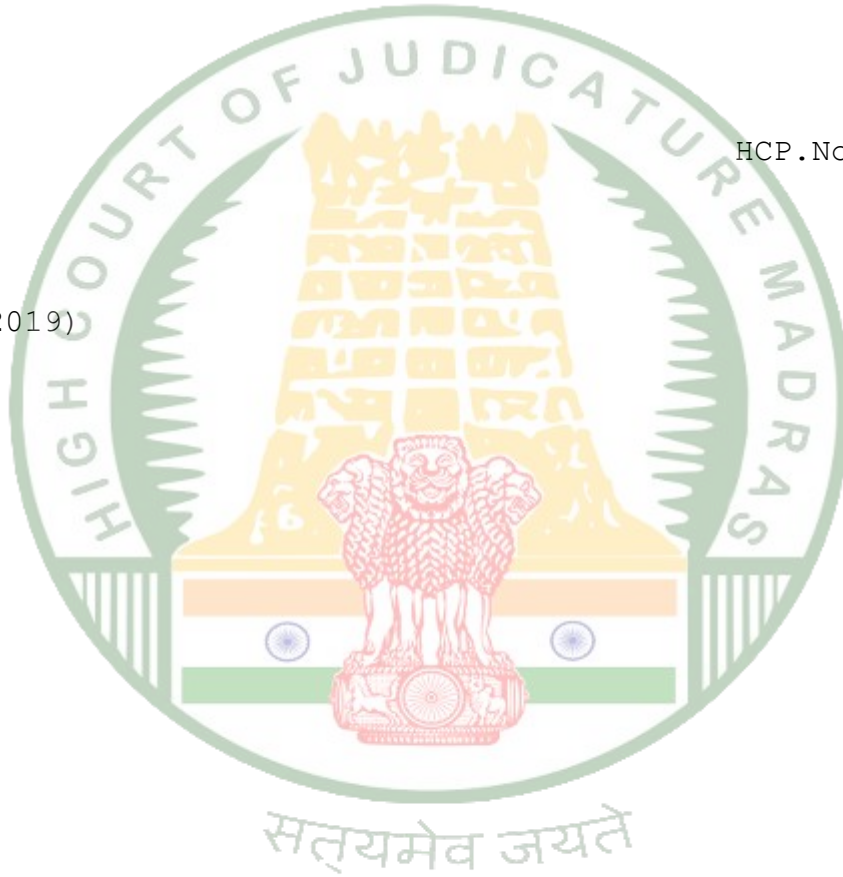
3.The Public Prosecutor
High Court, Madras.3. The Superintendent
Central Prison, Puzhal Chennai.

4.The Superintendent
Central Prison, Puzhal, Chennai

5. The Joint Secretary to Government
Public(Law and order)
Fort. St. George
Chennai 9

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RSI (CO)
SP(25/07/2019)



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