

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No. 128 of 2019

Kalavathi

... Petitioner/ Wife of the detenu

Vs

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

2.District Collector &
District Magistrate,
Vellore District,
Vellore 9.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, calling for the records in connection with the order of Detention passed by the second respondent dated 07.01.2019 in C3/D.O.No.01/2019 against the petitioner's husband Saravanan, Male aged 27 years S/o.Mani, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

For Respondents : Mr.R.Prathap Kumar
: Addl. Public
Prosecutor

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the wife of the detenu Saravanan, S/o.Mani, aged about 27 years. The detenu has been detained by the second respondent by his order in C3/D.O.No.01/2019 dated 07.01.2019, 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. A perusal of the proforma produced by the learned Additional Public Prosecutor would show that in respect of first representation dated 04.01.2019, which was received on 06.02.2019, remarks were called for on the same day and the remarks were received on 18.02.2019. Thus there was a delay of 12 days, of which, four days were Government holidays. The second representation dated 15.02.2019 was received on 20.02.2019 and though remarks were called for on the same day, remarks were received on 29.03.2019. Thus, there was a delay of 37 days of which 10 days were Government holidays.

6. It is the contention of the petitioner that the remarks were received on 18.02.2019 and there was delay of 70 days in considering the first representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 22 days were Government Holidays, hence, there was inordinate delay of 48 days in considering the first representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.05.2019.

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 considering the representation by the Hon'ble Minister for Electricity, 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 C3/D.O.No.01/2019 dated 07.01.2019 passed by the second respondent is set aside. The detenu, namely, Saravanan, son of Mani, aged 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

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

2.District Collector &
District Magistrate,
Vellore District,
Vellore 9.

3.The Superintendent,
Central Prison,
Vellore.

4.The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai-9.

H.C.P.No. 128 of 2019

VBA (CO)

RRS (19/07/2019)



WEB COPY