IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.149 of 2019

Mahalakshmi .. Petitioner/Wife of the detenue

Vs

1.The Secretary to Government,
Home, Prohibition and Excise
Department, Secretariat,
Fort St. George, Chennai - 9.

2.The District Magistrate and
District Collector,
Collector's Office,
Thiruvallur District,
Thiruvallur .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records relating to the detention order dated 27.12.2018 passed by the second respondent in his proceedings No.BCDFGISSSV No.40/2018 and quash the same and direct the respondents to produce the peitioner's husband namely Balaraman, S/o Munusamy, aged about 46 years, Ramar Koil Street, Srinivasapuram Village, Thiruttani Taluk, Thiruvallur District, who is presently undergoing detention in the Central Prison, Puzhal II, as 'Sand Offender' under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) before this Court and set him at liberty.

For Petitioner .. Mr.C. PRabhakaran

For Respondents.. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

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ORDER

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The petitioner is the wife of Balaraman, Male, aged about 46 years S/o Munusamy, who is the detenu. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.40/2018 dated 27.12.2018 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 27.12.2018. The petitioner made a representation on 10.01.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 18.01.2019. The remarks were duly received on 12.02.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.02.2019.

6. It is the contention of the petitioner that there was a delay of 26 days in submitting the remarks by the Detaining Authority, of which 7 days were Government

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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 10 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 BCDFGISSSV No.40/2018 dated 27.12.2018, passed by the second respondent is set aside. The detenu, namely, Balaraman, S/o Munusamy, aged about 46 years 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 Government,
Home, Prohibition and Excise
Department, Secretariat,
Fort St. George, Chennai - 9.

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2.The District Magistrate and
District Collector,
Collector's Office,
Thiruvallur District,
Thiruvallur

3.The Superintendent,
Central Prison - II, Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C. PRabhakaran , Advocate SR.No. 46032

H.C.P.No.149 of 2019

A.SK(29/07/2019)

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