

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

H.C.P.No.2009 of 2018

Madhavi,
W/o.Venkatesh

... Petitioner

-Vs-

1.The Commissioner of Police, Greater Chennai,
Office of the Commissioner of Police,
Egmore, Chennai.

2.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St.George, Chennai - 600 009.

3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of the detention passed by the first respondent herein and made in No.688/B.C.D.F.G.I.S.S.S.V./2018 dated 10.08.2018 and to set aside the same and directing the first respondent to produce the body of the detainee Rani, W/o.Masilamani aged about 55 years and now confined in Special Prison for Women, Puzhal, Chennai before this Hon'ble Court and thereby setting her at liberty.

For Petitioner : Mr.T.S.Srinivasan

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

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the daughter of the detainee herein, viz.

Rani, Wife of Masilamani, aged 55 years. The detainee has been detained by the first respondent by his order in 688/BCDFGISSSV/2018, dated 10.08.2018, holding him to be a "DRUG OFFENDER", as contemplated under Section 2(e) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). The said order is under challenge in this Habeas Corpus Petition.

2. The ground case has been registered against the detainee in Cr.No.327/2018 on the file of the Inspector of Police, P-4, Basin Bridge Police Station, for offences u/s 8(c) r/w 20(b) (ii) (B) of NDPS Act 1985. The detention order has been passed by first respondent in 688/BCDFGISSSV/2018.

3. We have heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

4. 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.

5. 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 detainee and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

6. The Detention Order in question was passed on 10.08.2018. The petitioner made a representation, dated 21.08.2018 and the same was received on 24.08.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 31.08.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.10.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 8 days in submitting the remarks by the Detaining Authority, of which 2 days were Saturday and Sunday and hence there was a delay of 6 days in submitting the remarks. Thereafter, there was yet another delay of 31 days in considering the representation, of which 11 days were Saturdays, Sundays and Government Holidays and hence there was yet another delay of 20 days in considering representation.

8. In *Rekha vs. State of Tamil Nadu*, reported in 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 detainee.

9. In *Sumaiya vs. The Secretary to Government*, reported in 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 detainee would be sufficient to set aside the order of detention.

10. 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority and 20 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in 688/BCDFGISSSV/2018, dated 10.08.2018, passed by the first respondent is set aside. The detainee, namely Rani, Wife of Masilamani, aged 55 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

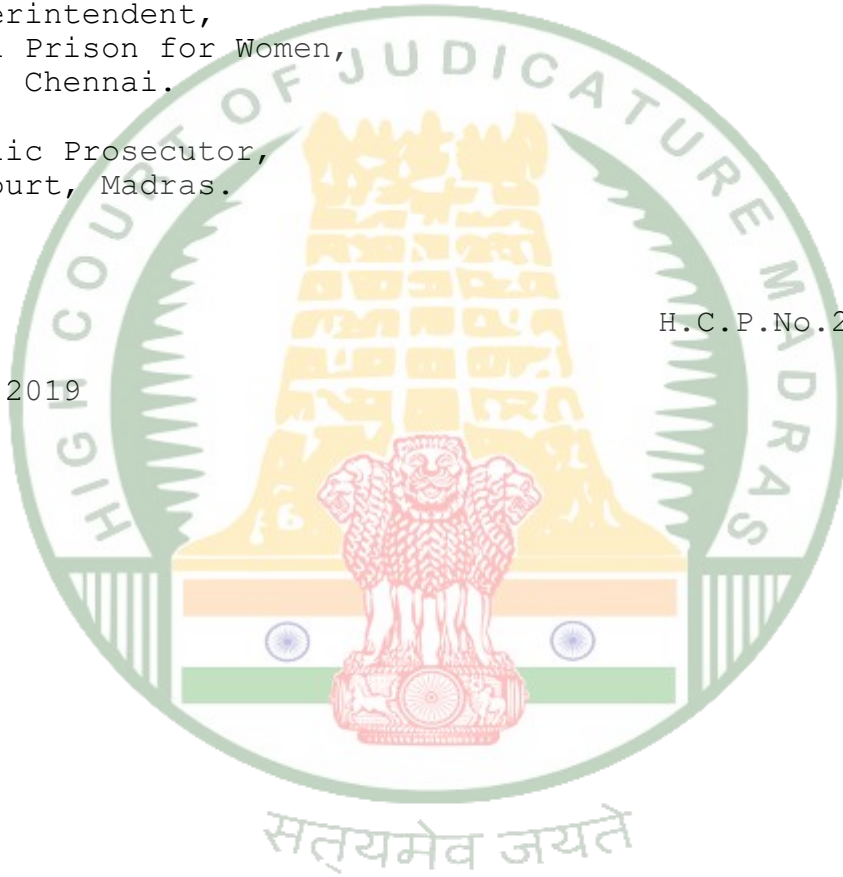
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To:

- 1.The Commissioner of Police, Greater Chennai,
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- 2.The Secretary,
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CSL/08.02.2019



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