

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

H.C.P. No. 890 of 2019

Latha
W/o.Kanagaraj

... Petitioner

-vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
O/o. Collector's Office,
Coimbatore - 18.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records, relating to the petitioner's son detention under the Tamil Nadu Act 14 of 1982 as "Sexual Offender" vide detention order, dated 11.03.2019 on the file of the second respondent herein made in proceedings vide in Cr.M.P.No.03/S.O./2019/E1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Thirunavukkarasu, S/o. Kanagaraj, aged 27 years, before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

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 mother of the detenu, Thirunavukkarasu, S/o. Kanagaraj, male, aged 27 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.03/S.O./2019/E1 dated 11.03.2019, holding to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 perused the records produced by the first respondent and the parawar remarks of the grounds raised by the petitioner filed by way of counter affidavit on behalf of the second respondent.

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 representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor vehemently opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representations, 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 11.03.2019. The petitioner made two representations. Thereafter, remarks called for by the Government from the Detaining Authority were duly received. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations. The proforma given by the first respondent is reproduced hereunder:

1. Category	: Sexual Offender
2. Name of the detenu	: Thiru. Thirunavukkarasu
3. Order of Detention dated	: 03/2019, 11.03.2019
4. District	: Coimbatore District
5. Representation dated	: 08.04.2019 24.04.2019
6. Representation received on	: 11.04.2019 29.04.2019
7. Remarks called for on	: 11.04.2019 30.04.2019
8. Reminder dated	: --- ---
9. Remarks received on	: 15.04.2019 07.05.2019
10. File submitted on	: 15.04.2019 07.05.2019
11. Under Secretary dealt with on	: 15.04.2019 07.05.2019
12. Deputy Secretary dealt with on	: 15.04.2019 07.05.2019

13.Minister for (Electricity & Prohibition and Excise) dealt with on :30.04.2019 20.05.2019

14.Rejected letter prepared on :02.05.2019 20.05.2019

15.Rejection letter sent to the detenu :03.05.2019 21.05.2019

16.Rejection letter served to the detenu :06.05.2019 23.05.2019

Government Holidays : April 13, 14, 17, 18, 19, 20, 21, 27, 28
May 1, 4, 5, 11, 12, 18, 19

No. of Days in Delay	Rep.I		Rep. II	
	Col. 7 - 9	Col. 12-13	Col. 7 - 9	Col. 12-13
No. of Days	03	14	06	12
Govt. Holiday	02	07	03	04
Total No. of Delay	01	07	03	08
	Total - 8		Total - 11	

6. Thus, there was a delay of 8 days in considering the first representation and 11 days in considering the second representation. In such view of the matter, the detention order is required to be set aside. The delay has not been satisfactorily explained by the respondents. We may note for coming to the abovesaid conclusion, we have made reliance upon proforma supplied on behalf of the first respondent. Thus, we are not in a position to concur with the submission made by the learned Additional Public Prosecutor in this regard.

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. Learned counsel appearing for the petitioner insisted that the other points raised also will have to be considered. Though we are not willing to go into the other grounds, in view of the settled position of law, which we follow in most cases, in view of the submission made, we are inclined to go into some of them.

11. Learned counsel appearing for the petitioner submitted that there is non-application of mind on the part of the detaining authority in passing the detention order. In the English version of the grounds of detention at para 4 of Page No.9, crime number of the ground case has been mentioned as Crime No.59 of 2018 instead of Crime No.59 of 2019. Thus, we do find non-application of mind on the part of the detaining authority which would also vitiate the detention order.

12. Though the learned Additional Public Prosecutor submitted that this Court will have to see the nature of offence committed by the detenu, we refrain ourselves from going into the same as we are concerned with the validity of the detention order passed alone. The detention order has been passed on 11.03.2019. Now, more than 7 1/2 months have elapsed out of total 12 months. We are also quite conscious of the fact that the detenu has not been enlarged on bail till now. Thus, we make it clear that the bail application filed will have to be decided on its own merit without being influenced by the order passed by us in this petition.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.03/S.O./2019/E1 dated 11.03.2019, passed by the second respondent is set aside. The detenu, namely, Thirunavukkarasu, S/o. Kanagaraj, male, aged 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

mmi/ssm

Sd/-

Assistant Registrar

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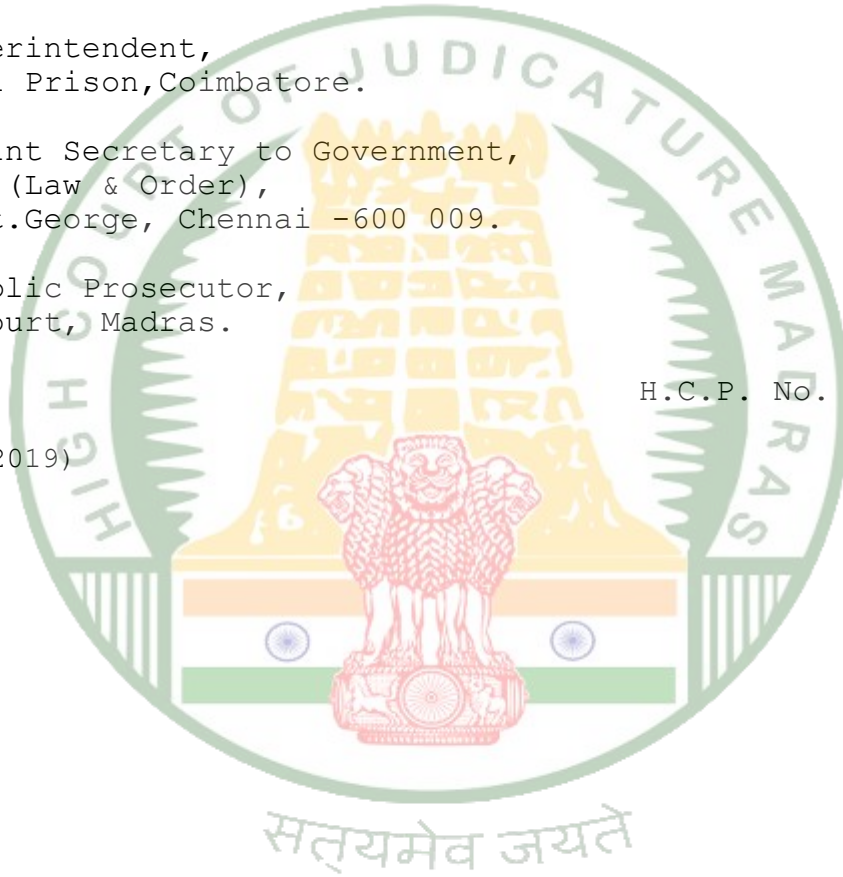
Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o. Collector's Office,
Coimbatore - 18.
- 3.The Superintendent,
Central Prison,Coimbatore.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 890 of 2019

Kak(07/11/2019)



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