

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.08.2019

CORAM

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

H.C.P. No. 1003 of 2019

Rajasekar

... Petitioner

-vs-

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

2.District Collector & District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

.... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 17.05.2019 in D.O.No.29/2019-C2 against the petitioner's father Elumalai, male, aged 52 years, S/o. Poongavanam, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the son of the detenu, Elumalai, S/o. Poongavanam, male, aged 52 years. The detenu has been detained by the second respondent by his order in D.O.No.29/2019-C2 dated 17.05.2019 holding to be a "Sand Offender", as contemplated under Section 2(gg) 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 17.05.2019. The petitioner made a representation dated 21.06.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.06.2019. The remarks were duly received on 22.07.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.07.2019.

6. It is the contention of the petitioner that there was a delay of 27 days in submitting the remarks by the Detaining Authority, of which 8 days were Government 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 Hon'ble 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 Hon'ble 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 19 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 D.O.No.29/2019-C2 dated 17.05.2019, passed by the second respondent is set aside. The detenu, Elumalai, S/o. Poongavanam, male, aged 52 years, is directed to be released forthwith unless his detention is required in connection with any other case.

mmi/ssm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home,Prohibition and Excise Department,
Secretariat,
Chennai - 600 009
- 2.The District Collector & District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The Superintendent,
Central Prison,Vellore.
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. 1003 of 2019

Kak (24/09/2019)