

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

Coram

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

H.C.P. No. 1081 of 2019

Lakshmi ... Petitioner/Wife of the Detenu

-vs-

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

2.The District Collector & District Magistrate
Kancheepuram District,
Kancheepuram. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 30.04.2019 in Memo No.BCDEGISSSV No.32/2019 against the husband of the petitioner Dineshkumar @ Dinesh, M/A, 30 Son of Ravi, who is confined at Central Prison, Vellore and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj

For Respondents : Ms.R.Saradha Devi
: Government Advocate
(Crl.Side)

ORDER

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

The petitioner is the wife of the detenu, Dineshkumar @ Dinesh, Son of Ravi, male, aged 30 years. The detenu has been detained by the second respondent by his order in Memo

No.BCDFGISSSV No.32/2019 dated 30.04.2019, 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 Government Advocate (Crl. Side) 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 Government Advocate (Crl. Side) opposed the Habeas Corpus Petition. She 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 Government Advocate (Crl. Side), 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 30.04.2019. The petitioner made a representation dated 28.05.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.05.2019. The remarks were duly received on 04.06.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 05.07.2019.

6. It is the contention of the petitioner that the remarks were received on 04.06.2019 and there was a delay of 6 days in submitting the remarks of which 2 days are Government holidays. It is the further contention of the learned counsel for the petitioner that there was a delay of 31 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 9 days were Government Holidays, hence, there was inordinate delay of 22 days in considering the representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 05.07.2019.

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 4 days in submitting the remarks and 22 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 Memo No.BCDEFGISSSV No.32/2019 dated 30.04.2019, passed by the first respondent is set aside. The detenu, Dineshkumar @ Dinesh, Son of Ravi, male, aged 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

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

WEB COPY

2.The District Collector & District Magistrate
Kancheepuram District,
Kancheepuram.

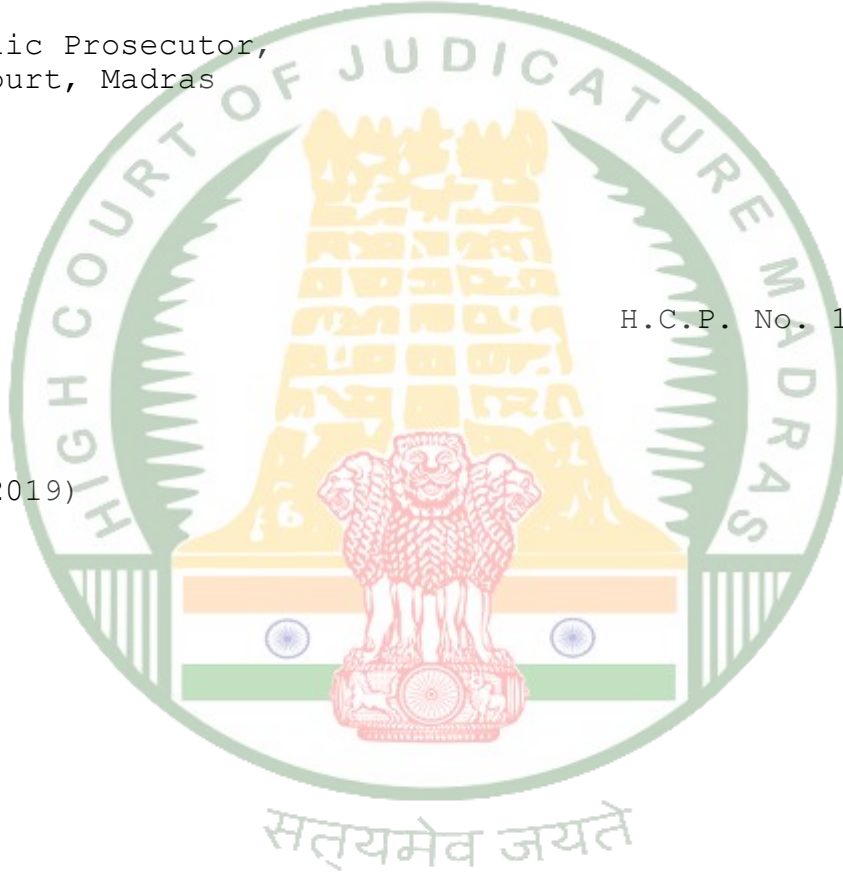
3.The Superintendent,
Central Prison, Vellore

4.The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.

5.The Public Prosecutor,
High Court, Madras

H.C.P. No. 1081 of 2019

VGI (CO)
SP (03/10/2019)



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