

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM

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

H.C.P. No. 1082 of 2019

Kalaiselvi

...Petitioner/Wife of the Detenu

-vs-

- 1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009
- 2.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The State
Rep. by The Inspector of Police,
Kalambur Police Station,
Tiruvannamalai District.

.... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in D.O.No.36/2019-C2 on the file of the second respondent to produce the petitioner's husband Elumalai, Son of Chinnapaiyan, aged about 44 years, now confined at Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.S.L.Venkatesan

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 wife of the detenu, Elumalai, Son of Chinnapaiyan, aged about 44 years. The detenu has been detained by the second respondent by his order in D.O.No.36/2019-C2 dated 27.05.2019 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 27.05.2019. The petitioner made a representation dated 26.06.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.06.2019. The remarks were duly received on 05.07.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.07.2019.

6. It is the contention of the petitioner that the remarks were received on 05.07.2019 and there was a delay of 8 days in submitting the remarks of which 2 days were Government Holidays. It is the further contention of the learned counsel for the petitioner that there was a delay of 6 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 2 days were Government Holidays, hence, there was inordinate delay of 4 days in considering the representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.07.2019.

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 of 6 days in submitting the remarks and 4 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 D.O.No.36/2019-C2 dated 27.05.2019, passed by the second respondent is set aside. The detenu, Elumalai, Son of Chinnapaiyan, aged about 44 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,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009
- 2.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
3. The Inspector of Police,
Kalambur Police Station,
Tiruvannamalai District.

4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.

5. The Superintendent of Prison,
Central Prison,Vellore.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Anbu, Advocate, SR.No.74395

H.C.P. No. 1082 of 2019

Kak(30/09/2019)



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