

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM

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

H.C.P.NO.1104 OF 2019

P.Sathyaraj

... Petitioner

-vs-

1. State rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009

2. The District Collector and
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 BCDFGISSSV No.37/2019 passed by the second respondent on 27.05.2019 set aside the same and direct the respondents to produce the Kamsala, wife of Perumal, aged 50 years, who is now detained in Special Prison for Women, Puzhal, Chennai - 66 before this Court and set her at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

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

ORDER

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

The petitioner is the son of the detenue, Kamsala, wife of Perumal, aged 50 years. The detenue has been detained by the second respondent by his order in BCDFGISSSV No.37/2019 dated 27.05.2019 holding to be a "Bootlegger", as contemplated under Section 2(b) 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 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 27.05.2019. The petitioner made a representation dated 24.06.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.06.2019. The remarks were duly received on 01.07.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 08.07.2019.

6. It is the contention of the petitioner that the remarks were received on 25.06.2019 and there was a delay of 6 days in submitting the remarks of which 2 days were Government Holidays. 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 of 4 days in submitting the remarks. 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 BCDFGISSSV No.37/2019 dated 27.05.2019, passed by the second respondent is set aside. The detainee, Kamsala, wife of Perumal, aged 50 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009
2. The District Collector and
District Magistrate,
Kancheepuram District, Kancheepuram.
3. The Superintendent of Prison,
Special Prison for Women, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai-9.
5. The Public Prosecutor, High Court, Madras.

H.C.P.No.1104 of 2019

VSNI(CO)
CS/10/10/2019