

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH  
and  
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 1660 of 2019

R.Rajalakshmi

... Petitioner

-vs-

- 1.The Secretary to Government,  
Home Affairs (Internal Security  
Department), North Block,  
New Delhi.
- 2.The Secretary to Government,  
Public (L & O) Department,  
Fort St. George, Secretariat,  
Chennai - 9.
- 3.The Commissioner of Police,  
Greater Chennai, Vepery,  
Chennai - 7.
- 4.The Inspector of Police,  
Fake Passport Wing,  
Central Crime Branch,  
Team VII, Greater Chennai Police,  
Vepery, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus against the detention order passed by the third respondent in No.1/NSA/2019 dated 19.07.2019 directing the respondents to produce the detenu Rasa @ Rasa Krishnan @ Ramesh @ Radhakrishnan Dharmadurai, son of Dharmadurai, aged about 57 years, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents Mr.G.Karthikeyan,  
Asst. Solicitor General for R1

: Mr.A.Natarajan,  
Public Prosecutor  
Assisted by  
Mr.Mohamed Muzzamil,  
Govt. Advocate

ORDER

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

The petitioner is the wife of the detenu and seeking to quash the Detention Order dated 19.07.2019 on various grounds, this habeas corpus petition has been filed.

2. The learned counsel appearing for the petitioner has submitted that there is considerable delay in considering the representation made. The first respondent did not even consider the representations. The first representation was made on 01.08.2019. The similar order relied upon for the ground case in Cr.No.207 of 2019 has been passed by the Judicial Magistrate Court, Alandur in Cr.No. 19 of 2018. However, the bail application pertaining to the detenu was dismissed in CrI.M.P.No.12742 of 2019 by the Court of Principal Sessions, Chennai. Therefore, there is fundamental error with respect to the Court which passed the order. Thus, there is non-application of mind.

3. The learned counsel made further submission that the translation has not been made with respect to the English version in Page No.167 of the booklet furnished. A copy of the remand order found at Page No.335 has not been translated at all. Thus, considering the above, this Habeas Corpus Petition will have to be dismissed.

4. The learned Public Prosecutor appearing for the State would submit that the detenu has involved in a serious offence of fabricating the passports. Letting him out would result in involving in similar crimes. On the question of delay, the learned Public Prosecutor submitted that there is no evidence to show that the first respondent has received the representation made. The contention regarding the remand order has not been

raised specifically in the affidavit filed. The translation being not correct cannot be a factor to hold that the Detention Order would get vitiated. Thus, this petition will have to be dismissed.

5. On the question of delay, the following averments have been made in paragraph 9:-

9. I respectfully submit that the averment made in paragraph Ground (e) of the affidavit is not correct. The representation of Tmt. R.Rajalakshmi wife of the detenu, dated 01.08.2019, which has been received by the Government on 02.08.2019 has been duly considered by the Government, after obtaining remarks from the Detaining authority on 08.08.2019 and reply given to the detenu through the Superintendent, Central Prison, Chennai on 24.08.2019. The same had been acknowledged by the detenu on 27.08.2019. It is submitted that the representation had been considered within 13 days from 02.08.2019 to 24.08.2019, after excluding ten public holidays. Therefore, the averment made in this regard is not acceptable.

6. Thus, admittedly there is a delay in considering the representation, which has not been explained. In this connection, this Court is inclined to rely upon the following decisions:-

(i) 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.

(ii) 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.

(iii) 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.

7. We have also taken a similar view in numerous other cases as well while setting aside the Detention Order. Thus, on this ground alone, the Detention Order is liable to be set aside.

8. We do not agree with the submissions of the learned Public Prosecutor on the conduct of the detenu. We are only concerned with the validity of the Detention Order alone and thus not to deal with the merit of the cases allegedly involved by the detenu.

9. On the ground of similar order relied upon is not similar also, we find force in the submission made by the learned counsel for the petitioner. As stated, the detenu's bail application was dismissed by the Court of Sessions whereas the similar order relied upon by the Detaining Authority has been passed in favour of the accused in one of the case in CrI.M.P.No.1091 of 2018 on the file of Judicial Magistrate Court, Alandur.

10. Regarding other two issues, we are not inclined to go into the the same especially when the question of non-furnishing the copy of the English version of the remand order has not been raised in the affidavit filed in support of this petition. Similarly, the ground raised to the effect that the translation has not been made also does not impress us. A small variation in the translated copy by itself would not vitiate the Detention Order.

11. Thus, in the light of the above said discussion, we are inclined to interfere with the Detention Order passed. Accordingly, the same stands set aside. However, we make it clear that we have not expressed anything on the merits of the case. If the detenu files any application seeking bail, the Court concerned will have to decide on its own merit without being influenced by the order passed by us.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.1/NSA/2019 dated 19.07.2019, passed by the third respondent is set aside. The detenu, namely, Rasa @ Rasa Krishnan @ Ramesh @ Radhakrishnan Dharmadurai, son of Dharmadurai, aged about 57 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1.The Secretary to Government,  
Home Affairs (Internal Security  
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Team VII, Greater Chennai Police,  
Vepery, Chennai.

5.The Superintendent,  
Central Prison, Puzhal, Chennai.

6.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.G.Karthikeyan, Assistant Solicitor General of India  
sr.92646

+1cc to Public Prosecutor, sr.93147

H.C.P. No. 1660 of 2019

gmr (co)  
nr 19/12/2019

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