



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

Coram

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

H.C.P. No. 1962 of 2019

Pushpa ... Petitioner

-vs-

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

2.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

3.State Rep. by
The Inspector of Police,
All Women Police Station,
Tiruvannamalai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus directing the respondents to call for the records in D.O.No.66/2019-C2 dated 20.08.2019 on the file of the second respondent and to produce the petitioner's son the detenu Iyyappan, son of Moorthy, before this Court now detained at Central Prison, Vellore and to set him at liberty.

For Petitioner : Mr.S.L.Venkatesan

For Respondents : Mr.R.Prathap Kumar
Addl. Public Prosecutor



The petitioner is the mother of the detenu, Iyyappan, son of Moorthy, male, aged 22 years. The detenu has been detained by the second respondent by his order in D.O.No.66/2019-C2 dated 20.08.2019, 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.

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 20.08.2019. The petitioner made a representation on 05.09.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.09.2019. The remarks were duly received on 18.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.10.2019.

6. It is the contention of the petitioner that there was a delay of 31 days in submitting the remarks by the Detaining Authority, of which 11 days were Government Holidays and hence there was an inordinate delay of 20 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 18.10.2019 and there was delay of 11



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 4 days were Government Holidays, hence, there was inordinate delay of 7 days in considering the representation.

7. 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.

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 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 20 days in submitting the representation & 7 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.66/2019-C2 dated 20.08.2019, passed by the second respondent is set aside. The detenu, namely, Iyyappan, son of Moorthy, male, aged 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. 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,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The Inspector of Police,
All Women Police Station,
Tiruvannamalai.
- 4.The Superintendent,
Central Prison,Vellore.
- 5.The Joint Secretary to Government
Public Law and Order
Fort St.George Chennai-9
- 6.The Public Prosecutor,
High Court, Madras.

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