

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

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

H.C.P.No. 2824 of 2018

Vembu

..Petitioner/Wife of Detenu

-Vs-

1.The State of Tamil Nadu
Rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The District Collector and
District Magistrate
Perambalur District
Perambalur.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records made in Cr.M.P.No.32 of 2018 dated 13.11.2018 passed by the District Collector & District Magistrate, Perambalur District the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenu Balasubramani, Son of Nalla Thambi, aged 55 years, before this Hon'ble Court now confined at Central Prison, Trichirapally before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

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

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the wife of Balasubramani, Son of Nalla Thambi, aged 55 years, who is the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P.No.32/2018 dated 13.11.2018, holding him 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 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. A perusal of the proforma produced by the learned Additional Public Prosecutor would show that in respect of first representation dated 22.11.2018, which was received on 26.11.2018, remarks were called for on the same day and the remarks were received on 30.11.2018. Thus there was a delay of 3 days.

6. It is the contention of the petitioner that the remarks were received on 30.11.2018 and there was delay of 16 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 12 days in considering the representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 21.12.2018.

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 12 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 C.M.P.No.32/2018 dated 13.11.2018 passed by the second respondent is set aside. The detenu, namely, Balasubramani, Son of Nalla Thambi, aged 55 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

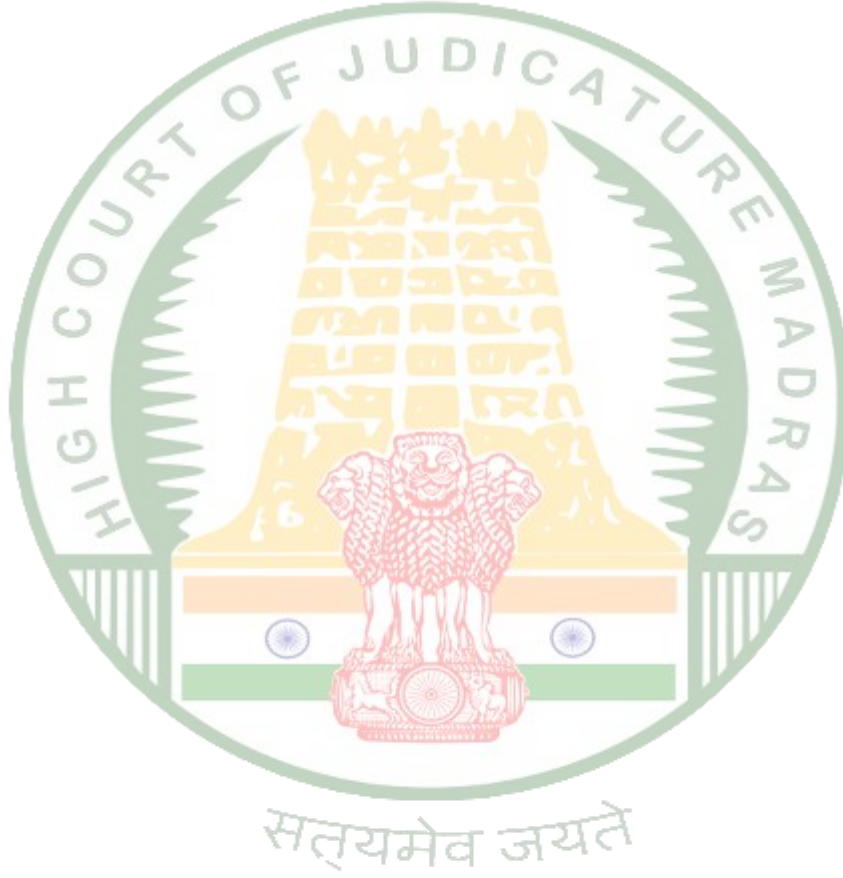
To

1. The Secretary to Government
Home, Prohibition and Excise Department,
Chennai - 600 009.
2. The District Collector and
District Magistrate
Perambalur District
Perambalur
3. The Superintendent,
Central Prison, Trichirapalli.
4. The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Govt.,
Public (Law & Order),
Fort St.George, Chennai - 9.

H.C.P.No. 2824 of 2018

Kak(18/07/2019)



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