



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1628 of 2018

Aysha

... Petitioner

-vs-

1.The State of Tamil Nadu

rep.by Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-9

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

3.The Superintendent of Prison
Central Prison, Tiruchirappalli

4.The Inspector of Police
Kumbakonam Taluk Police Station
Thanjavur District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records relating to the Detention Order passed by the 2nd Respondent in Detention Order in C.O.C.No.51/2018 dated 23.10.2018 and to quash the same and direct the Respondents to produce the body or person of the detainee, Silambarasan son of Kaliyamoorthi aged about 28 years, before this Court and set him at liberty, now detained at Central Prison, Tiruchirappalli.

For Petitioner : Mr.MA.Karunanithi

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 23.10.2018, as against Silambarasan son of Kaliyamoorthi, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3(1) of Tamil Nadu Act 14 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.



2. Challenging the order of detention, the wife of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.MA.Karunanithi, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents.

4. Learned counsel for the petitioner submitted that there is a delay of 25 days in considering the representation submitted by the petitioner, for which, no explanation justifying the delay has been attributed by the respondents. Therefore, the delay in considering the representation vitiates the order of detention.

5. 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.

6. The learned counsel for the petitioner further submitted that there is total non-application of mind on the part of the detaining authority in passing the detention order, as, according to him, the detenu has not filed any bail application in the ground case. However, the detention order has been passed by placing reliance upon the bail orders granted by this Court and stated that there is likelihood of the detenu coming out on bail. Thus, according to the learned counsel, there is non-application of mind on the part of the detaining authority.

7. As rightly contended by the learned counsel for the petitioner, the detaining authority referred to the fact that no bail application was filed or pending in the ground case. However, the detaining authority proceeded further to express subjective satisfaction that there was real possibility of the detenu coming out on bail, which shows total non-application of mind. Such a comparison of bail order passed in another case, when no bail application was filed, to express subjective satisfaction of the real possibility of the detenu coming out on bail is against the dictum laid down by a Larger Bench of the Supreme Court in *Rekha vs. State of Tamil Nadu* [(2011) 5 SCC 244], followed by a Division Bench of the Supreme Court in *Huidrom Konungjao Singh vs. State of Manipur and others* [(2012) 7 SCC 181] and by this Court in an unreported decision in *H.C.P.(MD) No.1567 of 2015 [Sri Devi vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]*, vide order dated 14.12.2015. Therefore, the said finding recorded by the detaining authority clearly reveals non-application of mind on the part of the detaining authority.



8. Further, in this case, the Detention Order was passed on 23.10.2018. As against the same, the petitioner made a representation, which was received by the Government on 15.11.2018. The remarks were called for by the Government from the Detaining Authority on 15.11.2018. The remarks were received only on 10.12.2018. Thereafter, the Government considered the issue and passed the order rejecting the representation on 21.12.2018. It is the contention of the petitioner that there was a delay of 25 days in considering the representation (16 days delay in receiving the remarks and 09 days delay in preparing the rejection letter).

9. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Supreme Court has further 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 of the detenu.

10. 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/detenu would be sufficient to set aside the detention order.

11. In *Tara Chand Vs. State of Rajasthan and others*, [1980 (2) SCC 321], the Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Supreme Court as well as this Court.

12. Applying the said dictum laid down by the Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 25 working days and therefore, the impugned detention order is liable to be quashed.

13. The detention order passed by the second respondent detaining the detenu Silambarasan son of Kaliyamoorthi, made in C.O.C.No.51/2018, dated 23.10.2018, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith unless his custody is required in any other case.

Sd/-

Assistant Registrar(Cr1.Side)

/TRUE COPY/

Sub Assistant Registrar(CS)



To:

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

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

3.The Superintendent of Prison,
Central Prison, Tiruchirappalli.

4.The Inspector of Police,
Kumbakonam Taluk Police Station,
Thanjavur District.

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

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-61555[F] dated
22/04/2019)

**H.C.P. (MD) No.1628 of 2018
22.04.2019**

CS: 16/05/2019/4P/8C