



WEB COPY

H.C.P(MD) No.817 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **17.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No.817 of 2019

S.Akila

... Petitioner

versus

1. The Additional Chief Secretary
to Government,
Home, Prohibition and Excise
Department,
Secretariat,
Chennai - 600 009.

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

3. The Superintendent of Prison,
Trichy Central Prison,

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, calling for the entire records, connected with the detention order of the 2nd respondent in Cr.M.P.No.41 of 2019 dated 01.08.2019 and quash the same and direct the respondents to produce her husband's body and person by name Sathish aged about 32 years, detained as a 'Sand Offender' and lodged in Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : M/s.V.Rajiv Rufus

For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

[Order of the Court was delivered by **T.RAJA, J.**]

The husband of petitioner is the detenu viz., Sathish, S/o.Chelladurai, aged about 32 years. The detenu has been detained, as per the order of the second respondent, dated 01.08.2019, under Section 2(gg) of the Tamil Nadu Act 14 of 1982,

<https://hcservices.courts.gov.in/hcservices>



branding him as "SAND OFFENDER". Challenging the same, the petitioner, wife of the detenu, is before this Court in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

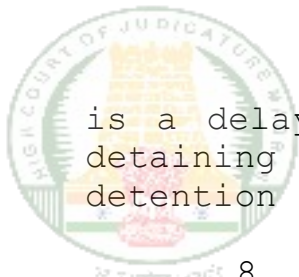
3. The Sponsoring Authority had recommended for the detention of the Petitioner under Act 14 of 1982 on a solitary case registered against the Petitioner and the Petitioner was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a 'Sand Offender' and has passed the Detention order, dated 01.08.2019.

4. Learned counsel for the petitioner, assailed the impugned order, *inter alia*, on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered properly and seriously and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

5. Learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was a delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

7. In this case, the Detention Order was passed on 01.08.2019. As against the same, the petitioner made a representation on 14.08.2019 and the same has been received on 19.08.2019, but, the remarks were received on 09.10.2019 and further, the same has been dealt with by the Minister on 29.10.2019. Finally, the rejection order was passed on 30.10.2019. Since in between the date of file submitted and till the date of rejection order, there was a huge inordinate and unexplained delay of 51 days on the part of the Government in considering the representation. The copy of the proforma produced by the learned Additional Public Prosecutor shows that there are 26 intermittent Government holidays and even after excluding the holidays, there



is a delay of 25 days, which is unexplained on the part of the detaining authority and hence, on the sole ground, the order of detention is liable to be interfered with.

8. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble 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 Hon'ble 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.

9. 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/detenuue would be sufficient to set aside the detention order. In **Tara Chand Vs. State of Rajasthan and others**, [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 detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

10. Applying the said dictum laid down by the Hon'ble 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 when the respondents have not given any valid reasons explaining the delay of twenty five days, the impugned detention order is liable to be quashed. Resultantly, the impugned order is quashed. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely Sathish, S/o.Chelladurai, aged about 32 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)



1. The Additional Chief Secretary
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+1 CC to Mr.V.RAJIV RUFUS, Advocate (SR-105441[F] dated
17/12/2019)

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KM/ (07.02.2020) 4P 6C