

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.42 of 2020

Nethra

W/o.Dharma @ Raju @ Don Dharma,
Bangalore,Karnataka-562 106

.... Petitioner/Wife
of the detenue

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Department.,
Secretariat,
Fort St.George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri.

.... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records relating to the Petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 17.12.2019 on the file of the second respondent herein made in proceedings Memo S.C.No.32/2019, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Dharma @ Raju @ Don Dharma S/o.Prakash @ Gunda Prakash, aged 23 years before this Court and set the Petitioner's husband at liberty from detention, now the Petitioner's husband detained at Central Prison, Salem.

For Petitioner : Mr.W.Camyles Gandhi.

For Respondents: Mr.R.Prathap Kumar,
Additional Public Prosecutor.

O R D E R
(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing".

2.The Wife of the Detenu has filed this Petition challenging the Detention Order passed by the Second Respondent in Memo S.C.No.32/2019 dated 17.12.2019 as the Detenu has got five adverse cases registered against him.

3.Heard Mr.W.Camyles Gandhi, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4.It is evident from the records that the representation sent on behalf of the Detenu to the detaining authority has not been disposed of in time and there is a delay of 14 days in disposing of the representation sent on behalf of the detenu.

5.In the decision in "C.Muthuvali Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai - 600 009" reported in "[(2017) (1) MWN (Cr.) 270 (DB)]" it has been held that an unexplained delay of nine working days on the part of the Government in considering the representation rendered the decision illegal. Another Division Bench of this Court in "Samaiah Vs.The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" has held that an unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order.

6.Further, a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" has held that "Preventive detention is by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles".

7.Since there is an unexplained delay in considering the representation submitted by the detenu, the detention order passed by the second respondent is liable to be set aside.

8.Accordingly, the detention order passed by the Second Respondent in Memo S.C.No.32/2019 dated 17.12.2019 is quashed

and the Habeas Corpus Petition is allowed. The detenu viz.,
Dharma @ Raju @ Don Dharma S/o.Prakash @ Gunda Prakash, aged 23
years, who is confined at Central Prison, Salem is directed to
be set at liberty forthwith unless his presence is required in
connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
Home, Prohibition and Excise Department.,
Secretariat,
Fort St.George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri.
3. The Superintendent of Prison,
Central Prison,
Salem.
4. The Joint Secretary to govt,Public (Law & Order),
Secretariat,Chennai-9
5. The Public Prosecutor,
High Court of Madras, Chennai.

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MR(CO)
GS(21/07/2020)