

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.6.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

H.C.P.No.52 of 2020

B.Sundarambal

...Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu, (Home)
Prohibition & Excise Department,
Secretariat, Fort.St.George,
Chennai-9.

2.The District Collector & District
Magistrate, Krishnagiri District,
Krishnagiri.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records connected with the order of the second respondent herein in S.C.No.35 of 2019 dated 24.12.2019 passed against the petitioner's husband - the detenu namely Balachander (a) Iyyanar, S/O Lakshmanan, aged about 36 years, who is now confined at Central Prison, Salem, set aside the same and consequently direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

सत्यमेव जयते

For Petitioner : Mr.A.Murugavel

For Respondents: Mrs.Prabhavathi Ram, APP

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O R D E R

(Order of the Court was made by T.S.SIVAGNANAM, J)

We have heard Mr.A.Murugavel, learned counsel for the petitioner and Mrs.Prabhavathi Ram, learned Additional Public

Prosecutor appearing for the respondents.

2. This habeas corpus petition has been filed by the petitioner - wife of the detenu by name Balachander (a) Iyyanar, S/O Lakshmanan to quash the order of detention made in S.C.No.35 of 2019 dated 24.12.2019. The detenu is working as a driver and he has been arrayed as the second accused in Cr.No.873 of 2019 on the file of the Inspector of Police, Krishnagiri Prohibition Enforcement Wing and has been detained under Act 14 of 1982.

3. We have elaborately heard both the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

4. The first accused namely Rajendran (a) Kutty Rajendran, S/O Elumalai was also detained under Act 14 of 1982 on the very same ground case and he filed H.C.P.No.2918 of 2019, which was allowed by the Hon'ble Division Bench of this Court vide order dated 26.5.2020 wherein the relevant portions read thus :

"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 15 days in submitting the remarks and 8 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 S.C.No.33 of 2019 dated 20.12.2019, passed by the second respondent is set aside. The detenu, namely, Rajendran @ Kutty Rajendran, male, aged 47 years, S/o.Elumalai is directed to be released forthwith unless his detention is required in connection with any other case."

5. We find that the grounds raised in the present case are also identical to that case considered by the Hon'ble Division Bench in the Habeas Corpus Petition filed by the first accused. In fact, we also find that the delay in the instant case is nearly 30 days.

6. For the above reasons, the Habeas Corpus Petition is allowed and the order of detention in S.C.No.35 of 2019 dated 24.12.2019, passed by the second respondent is set aside. The detenu, namely, Balanchander @ Iyyanar, aged about 36 years, S/o.Lakshmanan is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS/gg

To

- 1.The Secretary to the Government of Tamil Nadu, (Home) Prohibition & Excise Department, Secretariat, Fort.St.George, Chennai-9.
- 2.The District Collector & District Magistrate, Krishnagiri District, Krishnagiri.
- 3.The Superintendent, Central Prison, Salem.

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

5.The Public Prosecutor,
High Court, Madras-104.

H.C.P.No.52 of 2020

PPA(CO)
CB(11/06/2020)



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