

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2020

CORAM :

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

H.C.P.No.91 of 2020

Reshma, Female, aged 20 years
W/o.Arockia John Bosco
No.34, Kalimanpuram
Anna salai
Chennai-600 002

..Petitioner/Wife of the detenue

Vs.

1. State of Tamil Nadu
Represented by
the Secretary to Government
Home, Prohibition, Excise Department
Fort St. George, Chennai-600 009.

2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai-600 007.

.. Respondents

PRAYER:

This Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records relating to the detention order in Memo No.845/BCDFGISSSV/2019, dated 07.12.2019 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982, set aside the same and direct the respondents to produce the petitioner's husband Arockia John Bosco, S/o.Selvaraj, aged 34 years the detenue, now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's husband Arockia John Bosco, S/o.Selvaraj, aged 34 years the detenue, at liberty.

For Petitioner : Mr.K.Bommuraj

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 is heard through video-conferencing.

2.The wife of the detenu has filed this petition challenging the detention order passed against her husband, who has got two adverse cases apart from the ground case.

3.Heard Mr.K.Bommuraj, learned counsel appearing on behalf of the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing on behalf of the respondents.

4.The learned Counsel for the Petitioner elaborately argued the matter and submitted that there is a delay in disposing of the representation sent on behalf of the detenu. He submitted that the representation has been sent on 07.01.2020 whereas it has been disposed of with a delay of 07 days.

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 Habeas Corpus Petition is allowed and the detention order passed by the second respondent in Memo No.845/BCDFGISSSV/2019, dated 07.12.2019 is hereby set aside.

The detenu viz., Arockia John Bosco, S/o.Selvaraj, aged 34 years, now confined in Central Prison, Puzhal, Chennai, is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. State of Tamil Nadu
Represented by
The Secretary to Government
Home, Prohibition, Excise Department
Fort St. George
Chennai-600 009.
2. The Commissioner of Police
The Greater Chennai City
Vepery, Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Government Public (Law & Order),
Fort St.George, Chennai-9.
5. The Public Prosecutor
High Court, Chennai.

सत्यमेव जयते

H.C.P.No.91 of 2020

LN(CO)
CS/30/07/2020

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