

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2020

CORAM :

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

H.C.P.No.178 of 2020

Kumari

...Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Chennai 600 009.

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

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling upon the production of the records relating to the detention order dated 06.01.2020 made in detention order Memo No.BCDFGISSSV/05/2020 passed by the 2nd respondent herein quash the same and direct the detenu, Alphonse, S/o.Patrick, Hindu aged about 48 years branded as Drug Offender and now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty forth.

For Petitioner : Mr.P.Sundararajan.

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

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(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

No.BCDFGISSSV/05/2020 dated 06.01.2020 under the Tamil Nadu Act 14 of 1982 as he has got a ground case registered against him.

3.Heard Mr.P.Sundararajan, learned Counsel appearing for the Petitioner and Mr. R. Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4. It is seen from the records that the representation sent on behalf of the detenu has not been considered within time frame and there is a delay of 9 days in considering and disposing of the representation.

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 detention 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). 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 No.BCDFGISSSV/05/2020 dated 06.01.2020 is quashed and the Habeas Corpus Petition is allowed. The detenu viz., Alphonse, S/o.Patrick, Hindu aged about 48 years, who is confined at 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

//True Copy//

Sub Assistant Registrar

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To

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

H.C.P.No.178 of 2020

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KKV/14/08/2020

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