

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
H.C.P.No.417 of 2020

Mrs.Monisha

...
Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department.,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records in connection with the Order of Detention passed by the Second Respondent 20.09.2019 in BCDFGISSSV No.606 of 2019 against the Petitioner Husband Mr.Sankar @ Appunu male aged about 25 years son of Muthu, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.Goutham.

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

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O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing".

2.The Petitioner who is the wife of the detenu has challenged the detention order passed against her husband in BCDFGISSSV No.606 of 2019 dated 20.09.2019 by the Second Respondent as the detenu has got two adverse cases apart from the ground case.

3.Heard Mr.Goutham, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for 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 17.02.2020 whereas it has been disposed of only on 16.03.2020 and hence, there is a delay of 16 days in disposing of the representation sent on behalf of the detenu. However, the learned Additional Public Prosecutor opposed the same.

5.It is seen from the records that though the representation was sent on 17.02.2020, the same has been disposed of only on 16.03.2020. Hence, there is a delay of 16 days excluding the government holidays in disposing of the representation.

6.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.

7.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, 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".

8. 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.

9. Accordingly, the detention order passed by the Second Respondent in BCDFGISSSV No.606 of 2019 dated 20.09.2019 is quashed and the Habeas Corpus Petition is allowed. The detenu viz., Mr.Sankar @ Appunu male aged about 25 years son of Muthu, 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/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department.,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

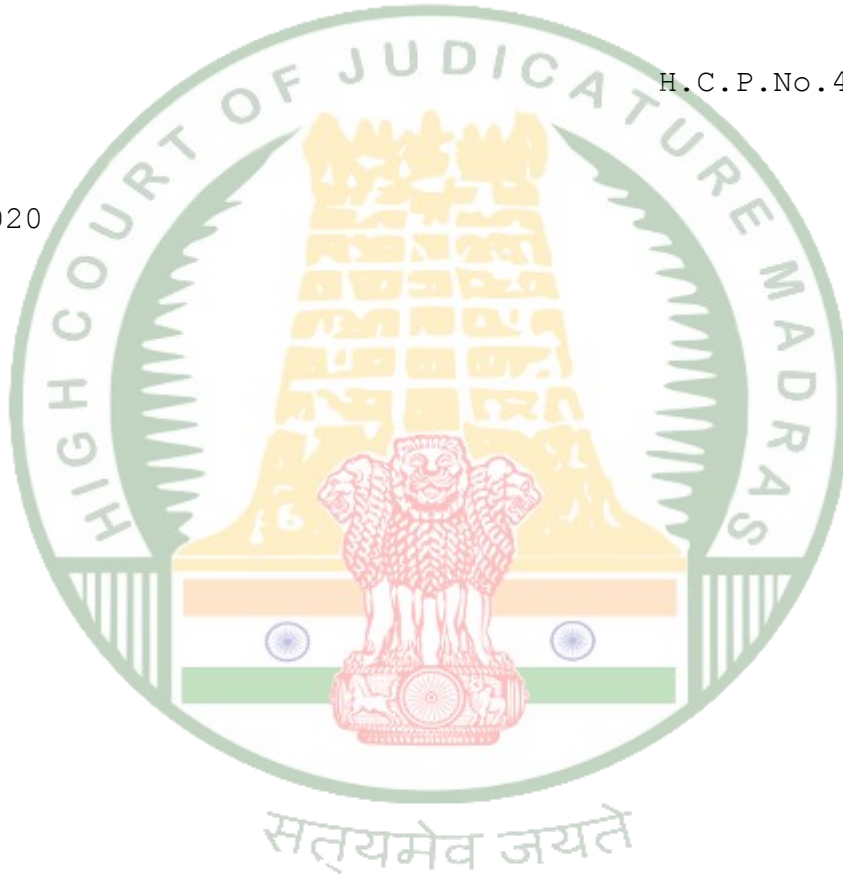
3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai

4.The Public Prosecutor,
High Court of Madras,
Chennai.

5.The Joint Secretary to Government
Public Law and order Department
Fort St.George Chennai-09

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