

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
H.C.P.No.429 of 2020

V.Anandhi

... Petitioner

Vs

1.The State of Tamil Nadu
rep.by its Secretary to Government,
Prohibition and Excise Department, (Home),
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
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 to call for the records relating to the detenu's detention order passed by the 2nd respondent dated 23.01.2020 in BCDFGISSSV No.33/2020 and set aside the same and produce the detenu V.Veeramaruthu @ Dinesh male aged about 28, son of Veerapandian, now detained in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Balasubramaniam
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 Conference".

2.The Wife of the detenu has filed this Petition challenging the detention order passed by the Second Respondent in BCDFGISSSV No.33/2020 dated 23.01.2020 under the Tamil Nadu Act 14 of 1982, branding him as 'Drug Offender', based on the ground case registered against him. It is also brought to the notice of this Court that the detenu has also got six previous cases and out of the said cases, two cases have been registered for the offence under Section 302 of Indian Penal Code.

3.Heard Mr.S.Balasubramaniam, 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 16 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 BCDFGISSSV No.33/2020 dated 23.01.2020 is quashed. The detenu viz., V. Veeramaruthu @ Dinesh male aged about 28, son of Veerapandian, now detained in Chennai Prison, Puzhal, Chennai is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

9. On technical grounds only, the detention order has been quashed by this Court. The very purpose of detention is to prevent the detenu from repeating offences and that public safety is ensured. Since this Court has quashed the detention order, in the interest of public and in the interest of justice, this Court is justified in directing the detenu to appear before the J-10, Chemmanchery Police Station, every Monday at 11.00 A.M., till 22.01.2021. The very purpose of this direction is to

ensure that the detenu does not repeat the commission of offence and that the police can also have a watch over the movement of the detenu, even if he is outside the prison. Accordingly, this petition is allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

H.C.P.No.429 of 2020

RV (11/09/2020)

सत्यमेव जयते

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