

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.403 of 2020

Rahila

... Petitioner/Wife of detenu

Vs

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

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

3.The Inspector of Police,
Team IX, Job Rocket,
Central Crime Branch,
Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus against the Detention Order passed by the 2nd Respondent in No.46/BCDFGISSSV/2020 dated 28.01.2020 directing the Respondents to produce the detenu Daniel Raj, aged 38 years, son of Paulraj who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.R.C.Paul Kanagaraj.

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 Conferencing".

2.The Wife of the Detenu has filed this Petition challenging the Detention Order passed by the Second Respondent in No.46/BCDFGISSSV/2020 dated 28.01.2020, branding him as 'Goonda'

as the Detenu has got about nine adverse cases apart from the ground case registered against him.

3. Though the Detention Order has been passed on 28.01.2020 and this Court is taking up only the Petitions challenging the Detention Orders passed in the year 2019, this Court is convinced to take up the matter based on the health condition of the detenu in spite of the objections of the learned Additional Public Prosecutor for taking up the matter out of turn. As per the medical report sent by the Prison Authorities dated 14.07.2020, the Detenu is suffering from hepatitis and generalised tonic chronic seizure and the same is said to be a dangerous disease and it requires proper treatment, this Court is taking up this matter out of turn.

4. Heard Mr.R.C.Paul Kanagaraj, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

5. Admittedly, no doubt, the Petitioner has committed serious offence and Crores of Rupees is involved in this case. This Court considering his health condition is lenient to take this matter. 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 22 days in considering and 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, 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".

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 No.46/BCDFGISSSV/2020 dated 28.01.2020 is quashed and the Habeas Corpus Petition is allowed. The detenu viz., Daniel Raj, aged 38 years, son of Paulraj, 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.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department.,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai.
- 3.The Inspector of Police,
Team IX, Job Rocket,
Central Crime Branch,
Chennai.
- 4.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.
- 5.The Public Prosecutor,
High Court of Madras,
Chennai.

H.C.P.No.403 of 2020

NR(CO)
SP(30/07/2020)