

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.477 of 2020

Seera Devii ... Petitioner/Mother of the detenu

Vs

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

2.The State rep. By
The Commissioner of Police
Greater Chennai
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 2nd respondent dated 14.01.2020 in Memo No.17/BCDFGISSSV/2020 against the petitioner son Mahesh Choudhary, male aged 24 years, S/o Mahendra Choudhary, who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detenu Mahesh Choudhary, S/o Mahendra Choudhary (M/A 24 years) before this Court and set him at liberty.

For Petitioner : Mr.P.Dasarathan

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 mother of the Detenu has filed this Petition challenging the Detention Order passed by the Second Respondent in Memo No.17/BCDFGISSSV/2020 dated 14.01.2020 as he has got two adverse cases registered against him apart from the ground case.

3.Heard Mr.P.Dasarathan, 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 13 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.17/BCDFGISSSV/2020 dated 14.01.2020 is quashed. The detenu viz., Mahesh Choudhary, male aged 24 years, S/o Mahendra Choudhary, who is confined at Central Prison, Puzhal 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 jurisdictional Police Station, every Monday at 11.00 A.M., till 13.01.2021. 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(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St George, Secretariat,
Chennai.
2. The Commissioner of Police
Greater Chennai
Chennai.
3. The Superintendent,
Central Prison, Puzhal.
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.477 of 2020

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srg 09/10/2020