

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P.NO.524 OF 2020

Kasthuri

... Petitioner

-vs-

1. Union of India,
Rep. by its Secretary, Home Department, New Delhi.
2. The Chief Secretary to
Govt. of Puducherry, Union of Puducherry,
Chief Secretariat, Puducherry.
3. The District Magistrate cum
Authorized Officer, Puducherry.
4. The Superintendent of Police (North)
Puducherry.
5. The Inspector of Police,
Sedarapet Police Station,
Puducherry.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus calling for the records of the detention order dated 07.01.2020 in detention order no. 01/DM/RO/D2/PPASAA/2020 on the file of the 3rd respondent herein quash the same and direct the respondents herein to produce the body of the detainee Kuralarasan @ Kural, S/o.Gengan, Hindu, aged about 23 years, who is now confined in Central Prison, Kalapet, Puducherry before this Court and set him at liberty.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents : Mr.Bharathachakravathy
: Public Prosecutor(Pondy)
for R2 to 5
: No appearance for R1

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the mother of Kuralarasan @ Kural, S/o.Gengan, Hindu, aged about 23 years, who is the detenu. The detenu has been detained by the third respondent by his order in 01/DM/RO/D2/PPASAA/2020 dated 07.01.2020, holding him to be a "Dangerous Person", as contemplated under the provisions of the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act No.10 of 2010). The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Public Prosecutor(Puducherry) appearing for respondents 2 and 3 and we have also perused the records carefully.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Public Prosecutor (Puducherry) opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Public Prosecutor (Puducherry), no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 07.01.2020. The petitioner has made a representation on 24.02.2020 and the same was received on 27.02.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 12.03.2020.

6. It is the contention of the petitioner that there was a delay of 14 days in considering the representation by the Government, of which 4 days were Government Holidays and hence there was an inordinate delay of 10 days in considering the representation.

7. In Rekha vs. State of Tamil Nadu (2011 (5) SCC 244), the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts

of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145), a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In Tara Chand vs. State of Rajasthan and others, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 10 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in 01/DM/RO/D2/PPASAA/2020 dated 07.01.2020 passed by the third respondent is set aside. The detenu, namely, Kuralarasan @ Kural, S/o.Gengan, Hindu, aged about 23 years is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Secretary,
Home Department,
New Delhi.
2. The Chief Secretary to
Govt. of Puducherry,
Union of Puducherry,
Chief Secretariat,
Puducherry.

3. The District Magistrate cum
Authorized Officer,
Puducherry.
4. The Superintendent of Police (North)
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5. The Inspector of Police,
Sedarapet Police Station,
Puducherry.
6. The Public Prosecutor,
High Court, Puducherry.

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VSNII(CO)
CS/05/11/2020