

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2020

CORAM :

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

H.C.P.No.675 of 2020
and
Crl.M.P.No.5100 of 2020

Nirmala

... Petitioner/
wife of the Detenu

Vs

- 1.State of Tamil Nadu
rep.by the Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai - 600 066.
- 4.The Inspector of Police,
M-8, Sathangadu Police Station,
(Law and Order),
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 relating to the detention order in Memo No.171/BCDFGISSSV/2020, dated 06.03.2020 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Selvam S/o.Loganathan aged about 31 years, the detenu now confined in Central Prison, Puzhal, chennai before this Court and set the petitioner's husband Selvam S/o.Loganathan aged about 31 years the detenu herein at liberty.

For Petitioner : Mr.M.Kaveri Selvam.

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.Since it is submitted that the detenu's wife suffered miscarriage and she delivered a dead fetus and no one is there to take care of his wife which is also confirmed by the learned Additional Public Prosecutor appearing for the respondents, this Court is taking up this matter.

3.The Wife of the detenu has filed this Petition challenging the detention order passed by the Second Respondent in Memo No.171/BCDFGISSSV/2020, dated 06.03.2020 under Section 2 (f) of the Tamil Nadu Act 14 of 1982, branding him as 'Goonda'.

4.Heard Mr.M.Kaveri Selvam, learned Counsel appearing for the Petitioner and Mr. R. Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

5. 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.

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 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.

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). 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 Memo No.171/BCDFGISSSV/2020, dated 06.03.2020 is quashed and this Habeas Corpus Petition is allowed. The detenu viz.,Selvam S/o.Loganathan aged about 31 years, 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. Consequently, connected miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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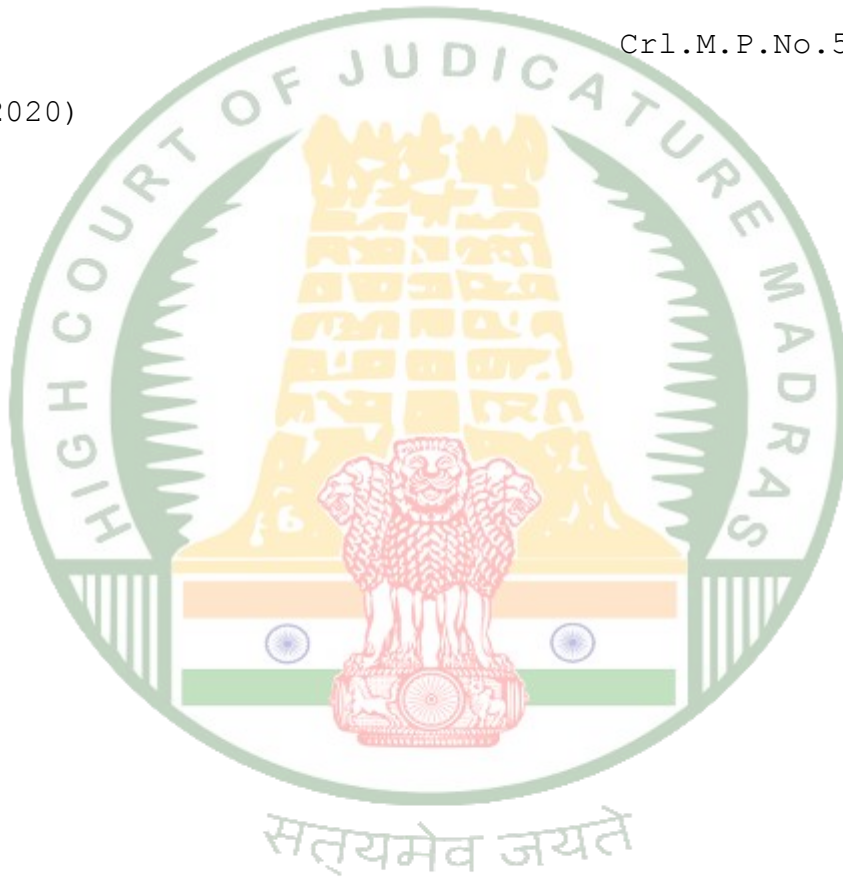
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- 4.The Inspector of Police,
M-8, Sathangadu Police Station,
(Law and Order),
Chennai.

5.The Joint Secretary
Public (Law and Order) Department
Secretariat
Fort St.George
Chennai - 600 009.

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

H.C.P.No.675 of 2020
and
Crl.M.P.No.5100 of 2020

VBA (CO)
CB(16/09/2020)



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