

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 799 of 2020

Bharathi

... Petitioner

-vs-

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai,
Vepery, Chennai 600 007
- 3.The Inspector of Police,
Anti Vice Squad - II,
Chennai.
- 4.The Superintendent of Prison
Central Prison, Puzhal,
Chennai 600 066.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records relating to the petitioner's friend detention under the Tamil Nadu Act 14 of 1982 vide detention order, dated 16.03.2020 on the file of the second respondent herein made in proceedings No.185/BCDFGISSSV/2020 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's friend namely Pandian @ MGR Pandian, son of Munusamy, aged 52 years, before this Court and set the petitioner's friend at liberty from detention, now petitioner's friend detained at Central Prison, Puzhal, Chennai - 66.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

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

The petitioner is the friend of Pandian @ MGR Pandian, son of Munusamy, male, aged 52 years, who is the detenu. The detenu has been detained by the second respondent by his order in No.85/BCDFGISSSV/2020 dated 16.03.2020, holding him to be a "Immoral Traffic Offender", as contemplated under Section 2(g) of Tamil Nadu Act 14 of 1982. 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 Additional Public Prosecutor appearing for the respondents and we have also perused the records carefully.

3. The detenu is stated to be involved in a case pertaining to immoral trafficking.

4. Learned Additional Public Prosecutor, on instructions, submitted that there are number of cases filed against the detenu.

5. Learned counsel appearing for the petitioner submitted that pursuant to the arrest made in the ground case, the detenu was remanded in other four cases. Now, the detenu has underwent surgery in both legs and he is unable to move. In fact, he is moving in the wheel-chair. On merit, it is submitted that there is lacunae in sending the arrest intimation to the friend/family member of the detenu as seen from page no.221 of the booklet. Incidentally, the learned counsel further submitted that there is a delay in considering the representation.

6. Primarily, we are concerned with the legal issues involved. The detention order has been passed in the month of March, 2020. The detenu is stated to have undergone surgery in both the legs and is unable to move freely without any external aid. This factum is not disputed. On the legal issue involved also this Court has already taken a view in similar cases in favour of the detenu.

7. The Detention Order in question was passed on 16.03.2020. The petitioner made a representation on 21.05.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.06.2020. The remarks were duly received on 11.06.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.06.2020.

8. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.06.2020 and there was a delay of 19 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 6 days were Government Holidays, hence, there was inordinate delay of 13 days in considering the representation.

9. 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.

10. 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority and unexplained delay of 13 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department.

12. As evidenced from the document in page No.221 of the Booklet furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the family member of the detenu through SMS but no materials have been furnished to substantiate that the said intimation was sent through Thapal or Registered post or as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu would amount to deprivation of the right of the detenu to make an effective representation and the same would vitiate the order of detention and the same cannot be sustained in the eye of law. Thus the impugned detention order is liable to be set aside both on the ground of delay and on this ground.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.185/BCDFGISSSV/2020 dated 16.03.2020, passed by the second respondent is set aside. The detenu, namely, Pandian @ MGR Pandian, son of Munusamy, male, aged 52 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mmi/ssm
To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai,
Vepery, Chennai 600 007
- 3.The Inspector of Police,
Anti Vice Squad - II,
Chennai.
- 4.The Superintendent of Prison
Central Prison, Puzhal,
Chennai 600 066.
5. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P. No. 799 of 2020

BR(CO)
SP(08/12/2020)

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