

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

Coram

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

H.C.P. No. 961 of 2020

R.Laxmi

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu
Rep by its Principal Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Perambalur District, Perambalur 621 212.
- 3.The Superintendent of Police,
Perambalur District, Perambalur – 621 212.
- 4.The Inspector of Police,
Arumbavur Police Station, Perambalur District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating to the proceedings of the 2nd respondent in Cr.M.P.No.05/2020 dated 19.03.2020 against the petitioner's son R.Senthilkumar, aged about 24 years, Son of M.Ravi and quash the same and consequently direct the respondent's to produce the detenu who has been detained under Tamil Nadu Act 14 of 1982, currently confined at Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.M.Palanimuthu
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 mother of Senthilkumar, S/o. M.Ravi, aged about 24 years, who is the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P.No.05/2020 dated 19.03.2020, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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. We have also perused the records produced by the Detaining Authority.

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 Additional Public Prosecutor 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 Additional Public Prosecutor, 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 19.03.2020. The petitioner made a representation on 07.07.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.07.2020. The remarks were duly received on 04.08.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 07.08.2020.

6. It is the contention of the petitioner that there was a delay of 20 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 14 days in submitting the remarks.

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 14 days in submitting the remarks by the Detaining Authority. 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 Cr.M.P.No.05/2020 dated 19.03.2020, passed by the second respondent is set aside. The detenu, namely, Senthilkumar, S/o. M.Ravi, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.M.S.,J.) (D.K.K.,J.)
23.11.2020

Index: Yes/No
mmi/ssm

WEB COPY

To

- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Perambalur District, Perambalur 621 212.
- 3.The Superintendent of Police,
Perambalur District, Perambalur – 621 212.
- 4.The Inspector of Police,
Arumbavur Police Station, Perambalur District.
- 5.The Public Prosecutor,
High Court, Madras.

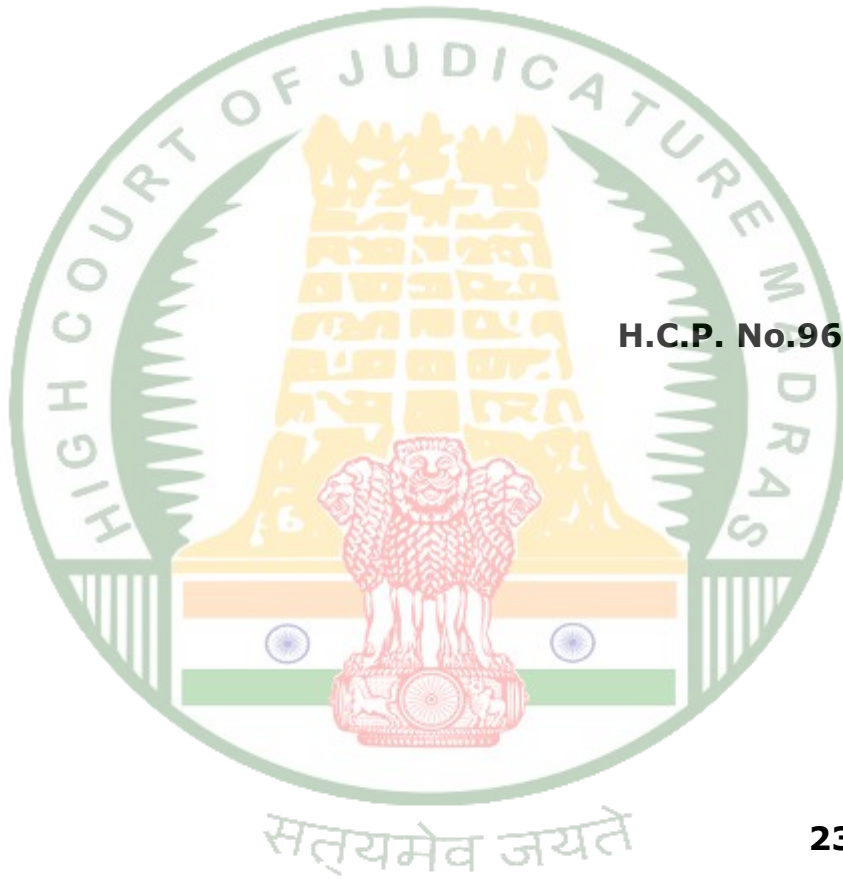


WEB COPY

HCP No.961 of 2020

**M.M.SUNDRESH, J.
and
D.KRISHNAKUMAR, J.**

mmi/ssm



H.C.P. No.961 of 2020

23.11.2020

WEB COPY