

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

Coram

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

H.C.P. No.1627 of 2020

Katturani .. Petitioner/ Mother of the Detenu

Vs

- 1.The State of Tamilnadu,
Rep.by its Secretary of Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent,
Central Prison,
Salem. 636007.
- 4.The Inspector of Police,
Salem CSCID Unit Police Station,
Salem City, Salem District.

..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus, call for the entire records leading detention of Petitioner's son, the Detenu Thiru. Chelladurai, aged 34, Son of Purusothman, presently detained in Central Prison, Salem, under Act 14/1982, as 'Black Marketer' vide the detention order dated 07.08.2020 in C.M.P.No.1/Black Marketer/Salem City/2020, on the file of the 2nd Respondent herein, directing to produce the person or body of the Detenu Thiru. Chelladurai, aged 34, son of Purusothman before this Court and thereafter set him at liberty .

For Petitioner :Mr.B.Vasudevan

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 the detenu, Thiru. Chelladurai, aged 34, Son of Purusothman. The detenu has been detained by the second respondent by his order in C.M.P.No.1/Black Marketer/Salem City/2020 dated 07.08.2020 holding him to be a "Goonda", as contemplated under Section 2(f) 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 07.08.2020. The petitioner made a representation on 17.08.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 10.09.2020. The remarks were duly received on 12.09.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 17.09.2020.

6. It is the contention of the petitioner that there was a delay of 2 days in submitting the remarks by the Detaining Authority and hence there was a delay of 2 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 12.09.2020 and there was a delay of 6 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 1 day was Government Holiday, hence, there was inordinate delay of 5 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 2 days in submitting the remarks by the Detaining Authority and unexplained delay of 5 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. 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 C.M.P.No.1/Black Marketer/Salem City/2020 dated 07.08.2020, passed by the second respondent is set aside. The detenu, namely, Thiru. Chelladurai, aged 34, Son of Purusothman, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Asst.Registrar (CJ CONFERENCE)

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Sub Asst. Registrar

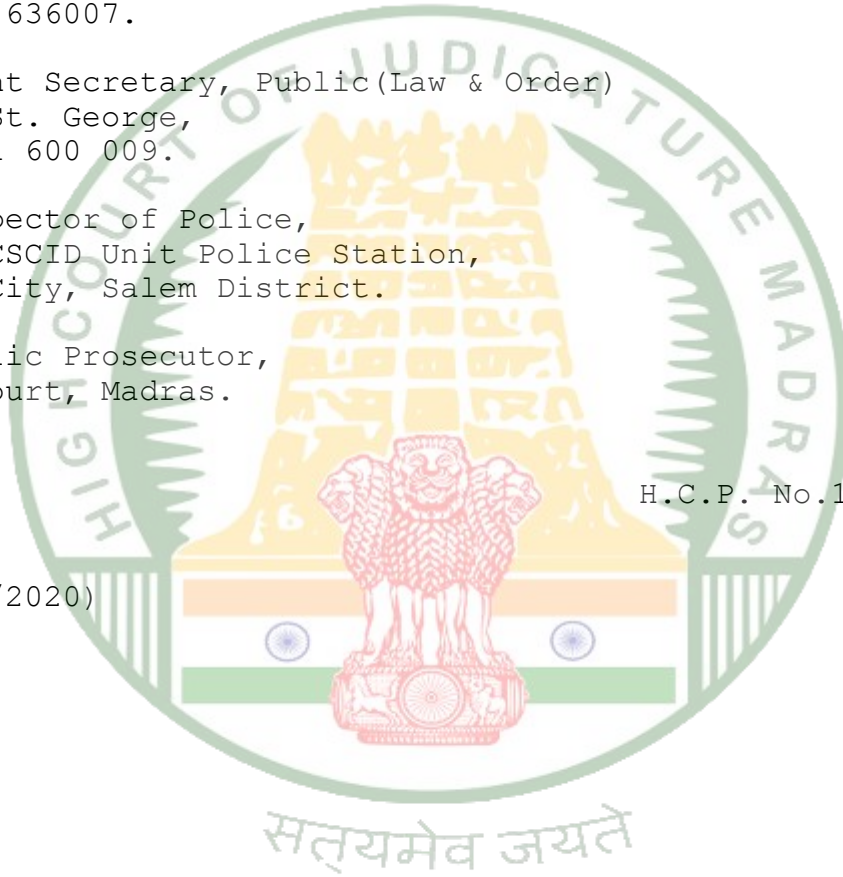
ak/nv

To

1. The Secretary of Government,
The State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Salem City.
3. The Superintendent,
Central Prison,
Salem. 636007.
4. The Joint Secretary, Public (Law & Order)
Fort, St. George,
Chennai 600 009.
5. The Inspector of Police,
Salem CSCID Unit Police Station,
Salem City, Salem District.
6. The Public Prosecutor,
High Court, Madras.

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CA (CO)
CAA (19/12/2020)



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