

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.2579 of 2019

Kamatchi (aged 55)

W/o.Balaji,

No.116, Kalathumedu Street,

Kosappalayam,

Arani Town,

Thiruvannamalai District.

... Petitioner/Mother
of Detenue

Vs

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

3.The Superintendent of Prisons,
Central Prison,
Vellore.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records from the 2nd respondent in connection with order in D.O.No.80/2019-C2, dated 10.10.2019 and quash the same and produce the petitioner's son namely Mandai @ Manikandan, S/o.Balaji, aged 27 years now confined in Central Prison, Vellore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner :Mr.P.Pugalenth

For Respondent :Mr.R.Prathap Kumar,

Additional Public Prosecutor.

O R D E R
(Order of the court was made by MRS.R.HEMALATHA.J.,)

Challenge is made to the Order of detention passed by the second respondent viz., the District Collector and District Magistrate, Thiruvannamalai District vide Order dated 10.10.2019 in D.O.No.80/2019-C2 whereby the son of the petitioner, Mandai @ Manikandan was ordered to be detained under the Provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act 1982 (in short Tamil Nadu Act 14/1982).

2.As per the grounds of Order of detention dated 10.10.2019 passed by the second respondent, the detenu was detained under the aforesaid Act since criminal prosecution was initiated against him in Cr.No.649 of 2019 of Arni Town Police Station under Sections 392, 394 of IPC on 18.09.2019.

3.Heard Mr.P.Pugalenth, learned counsel appearing on behalf of the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor.

4.Among other grounds, the main ground harped upon by the learned Counsel for the petitioner is that though representation was submitted by the detenu on 09.11.2019, there is an abnormal delay of 21 days in considering the same.

5.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 decision 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.

6.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). Since, 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". 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.

7. Accordingly, this petition is allowed by setting aside the order of detention passed by the second respondent in D.O.No.80/2019-C2, dated 10.10.2019 and the detenu is directed to be set at liberty forthwith, unless his detention is required in connection with any other case. It is also made clear that this order will not affect the criminal cases pending against the detenu.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The the Secretary to Government,
Home, Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

3.The Superintendent of Prisons,
Central Prison,
Vellore.

4.The Joint Secretary to Government,Public (Law & Order)
Fort St.George,Chennai.

5.The Public Prosecutor,
High Court,
Madras 104.

H.C.P.No.2579 of 2019

GS(03/08/2020)