



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA
H.C.P.No.2574 of 2019

Priyanka

... Petitioner/friend of
the detenu

Vs

1.State of Tamil Nadu,
Rep. By the Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kancheepuram District.

... 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 BCDFGISSSV No.75/2019, dated 23.10.2019 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's friend Sangili @ Vijidaran @ Vijayadoss S/o.Bagavandoss aged about 28 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's friend Sangili @ Vijidaran @ Vijayadoss S/o.Bagavandoss aged about 28 years the detenu.

For Petitioner : Mr.D.Gopikrishnan.

For Respondent : Mr.R.Prathap Kumar
Additional Public Prosecutor (Puducherry).



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, dated 23.10.2019, whereby the friend of the petitioner by name Sangili @ Vijidaran @ Vijayadoss S/o.Bagavandoss aged about 28 years 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 23.10.2019, passed by the second respondent, the detenu was detained under the aforesaid Act since a criminal prosecution was initiated against him in Cr.No.183 of 2019 of Chunambedu Police Station under Sections 147, 148, 120-B, 506(ii), 302 of Indian Penal Code read with 4 (b) of Indian Explosive Substances Act. Apart from this case, there is an adverse case against the detenu in Cr.No.11 of 2019 of Chithamur Police Station for the offences under Sections 147, 148, 294 (b), 324, 506 (ii) of Indian Penal Code.

3.Heard Mr.D.Gopikrishnan, learned Counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor for the respondents.

4.Among other grounds, the main ground harped upon by the learned Counsel for the petitioner is that a representation submitted by the detenu on 13.11.2019 though was received by the concerned authority on 18.11.2019, was disposed of after a lapse of more than 30 days.

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 BCDFGISSSV No.75/2019, dated 23.10.2019 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

ay
To

- 1.State of Tamil Nadu,
Rep. By the Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kancheepuram District.
- 3.The Superintendent
Central Prison puzhal Chennai
(in duplicate for communication to detenue)



4.The Joint Secretary to Government
Public Law & Order Fort St.George Chennai-9

5.The Additional Public Prosecutor,
High Court of Madras,
Chennai.

WEB COPY

H.C.P.No.2574 of 2019

bs (co)
aa13/07/2020