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H.C.P(MD)No.834 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2020

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.834 of 2019

I.Devi

... Petitioner/Wife of the Detenu
Vs.

1.The State of Tamil Nadu,

represented by

The Additional Chief Secretary to Government,

Home, Prohibition and Excise Department,

Fort St. George,

Chennai - 600 009.

2.The Commissioner of Police,

Tirunelveli City,

Tirunelveli.

3.The Superintendent of Prison,

Central Prison,

Palayamkottai,

Tirunelveli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the entire records connected with the detention order passed in No.12/BCDFGISSSV/2019, dated 09.08.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, the petitioner's husband, i.e., Ayyappan, aged about 32 years, son of Vellapandi Thevar, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

* * * * *



ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

The petitioner is the wife of the detenu viz., Ayyappan, Son of Vellapandi Thevar, aged about 32 years. The detenu has been detained, as per the order of the second respondent, dated 09.08.2019, under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as **"DRUG OFFENDER"** on the following ground:

"On 20.07.2019 at 11.00 hours, Subburayalu, Sub-Inspector of Police, Pettai Police Station and police party went on patrolling at M.G.R.Nagar, Karungadu Road, Mylappapuram areas in Pettai on the direction of the Inspector of Police, Pettai Police Station on receipt of information about sale of Ganja. When they came near Middle Street, Mylappapuram, Ayyappan of M.G.R.Nagar, Pettai (later came to know during enquiry) parked his motor cycle bearing Registration No.TN 72 BL 8833 hidden behind a heap of haystack there, and was selling a packet from a yellow colour bag to an unknown person after receiving money. On seeing the police party, the said unknown person ran away and escaped. The police party caught hold of Ayyappan who tried to escape and on examining the yellow bag with his consent, they found 1 kilo and 500 grams ganja."

Challenging the same, the petititoner is before this Court with this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3.Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time. The representation was made by the petitioner on 19.08.2019, but, the same was considered only on 23.09.2019. The Deputy Secretary dealt with the representation on 27.08.2019. But the order of rejection was issued only on 23.09.2019. On the said process, there was a delay of 14 days in considering the representation.

4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 09.08.2019. As against the same, the petitioner made a representation on 19.08.2019. The remarks were called for by the Government from the Detaining Authority on 21.08.2019. The remarks were received on 27.08.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 23.09.2019. It is the contention of the petitioner that there was delay of 14 days in considering the representation.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

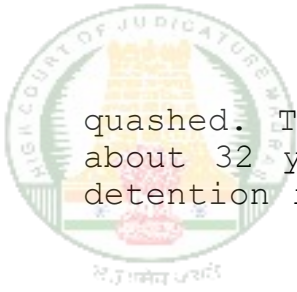
8. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously 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 of the detenu.

9. 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/detenu would be sufficient to set aside the detention order.

10. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, under Article 22(5) of the Constitution of India, Statute prescribes that any representation made to the authorities concerned has to be disposed of within a reasonable time. In this case, undoubtedly, there is an inordinate and unexplained delay of 14 working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition shall stand allowed and the Detention Order, passed by the second respondent, in his proceedings in No.12/BCDFGISSV/2019, dated 09.08.2019, is



quashed. The detenu, namely, Ayyappan, S/o.Vellapandi Thevar, aged about 32 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar(CS)

SML

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in

H.C.P(MD)No.834 of 2019

02.03.2020

sml

KK/16.03.2020/ 4P- 6C