



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P.(MD)No.852 of 2019

WEB COPY

P.Indrani : Petitioner

Vs.

1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai.

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

3.The Superintendent of Prison
Central Prison, Tiruchirappalli
Tiruchirappalli District.

4.The Inspector of Police,
Karur Town Police station,
Karur.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to set aside the detention order passed by the 2nd respondent in Cr.M.P.No.05/2019 dated 01.07.2019 and direct the respondents to produce the body and person of the detenu named M.Diwanth, son of Muthukrishnan aged about 39 years, before this Court and set him at liberty.

For Petitioner : Mr.R.Sevugaraja

For Respondents : Mr.K.Dinesh Babu

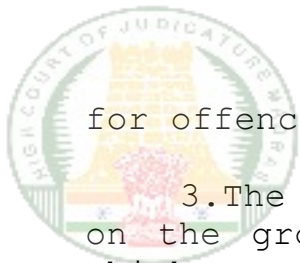
Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA, J.)

Challenging the correctness of the order of detention passed by the second respondent vide proceedings in Cr.M.P.No.05/2019 dated 01.07.2019, whereby, the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", the petitioner/Indrani, wife of the detenu, namely, Diwanth, is before this Court with this Habeas Corpus Petition.

2.As per the grounds of detention, dated 01.07.2019, the detenu came under adverse notice in two adverse cases and in the ground case, which was registered in Crime No.380/2019 on the file of Karur Town Police Station, who is the sponsoring authority,



for offence under Sections 420 and 307 IPC.

3. The learned counsel assailed the impugned order, inter alia, 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 properly and seriously and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. 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. In this case, the Detention Order was passed on 01.07.2019. As against the same, the petitioner made a representation on 06.07.2019. The remarks were called for by the Government from the Detaining Authority on 08.08.2019. The remarks were received on 18.09.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 30.09.2019. There are totally 39 days delay in considering the representation. It is the contention of the petitioner that excluding 17 days towards public holidays, there was delay of 22 days in considering the representation.

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

7. 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.

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

9. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 22 working days and therefore, the impugned detention order is liable to be quashed. Resultantly, the impugned order is quashed. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely, Diwankanth, S/o.Muthukrishnan, aged about 39 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

RR

To

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai.
- 2.The District Magistrate and District Collector,
Karur District, Karur.
- 3.The Superintendent of Prison
Central Prison, Tiruchirappalli
Tiruchirappalli District.
- 4.The Inspector of Police,
Karur Town Police station, Karur.
- 5.The Joint Secretary to Government,
(law and order), Fort Saint George, Chennai-9
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD)No.852 of 2019

Dated: 10.01.2020

KM/ (06.02.2020) 3P 7C

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