



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No.864 of 2019

C.Malliga

... Petitioner/Mother of Detenue

versus

1. The Additional Chief Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2. The District Collector / District Magistrate,
Trichy District,
Trichy.

3. The Superintendent of Prison,
Central Prison,
Trichy.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the records relating to order in TPDA No.8593 (Cr.M.P.42/2019) dated 02.08.2019 passed by the second respondent and quash the same and consequently, direct the 2nd respondent to produce the person of the detenu, namely, Rajenthiran, Son of Chinnasamy aged about 32 years, now detained at Tiruchirapalli Central Prison before this Court.

For Petitioner	:	M/s.A.Azhagesan
For Respondents	:	Mr.K.Dinesh Babu, Additional Public Prosecutor

ORDER

[Order of the Court was delivered by **T.RAJA, J.**]

The petitioner is the mother of the detenu viz., Rajenthiran, S/o.Chinnasamy, aged about 32 years. The detenu has been detained, as per the order of the second respondent, dated 02.08.2019, under Section 2(gg) of the Tamil Nadu Act 14 of 1982, branding him as "Sand Offender". Challenging the same, the petitioner is before this Court in this Habeas Corpus Petition.



2. Learned counsel appearing for the petitioner placed his submission on three fold. Firstly, when the detenu is only a sand procurer, using his lorry carried two units of river sand, on 25.07.2019, he was arrested as Sand Offender and this was only a solitary case slapped against the detenu. It is further submitted that from the date of arrest and even after passing the impugned detention order 02.08.2019 by the second respondent, no bail application was moved before any Court and no such bail application was pending before any Court. While so, the second respondent has wrongly cited that he is satisfied from the materials placed before him in the ground case that the detenu has committed crimes and is also acting in a manner prejudicial to the maintenance of public order and as such, he is a sand offernder as contemplated under Section 2(gg) of the Tamil Nadu Act 14 of 1982. The satisfaction arrived at by the second respondent from the material placed before him in the ground case never shows that the detenu has committed crimes. Therefore, the subjective satisfaction reached by the second respondent for passing the impugned detention order is without any basis and subjective satisfaction has been wrongly reached. Therefore, the impugned order is liable to be quashed. Secondly, when there was no bail application filed by the detenu, the second respondent has noted that the detenu has not filed any bail application sofar and therefore, there is a real possibility of his coming out on bail in the above case. Therefore, the impugned detention order is highly unjustifiable and untenable. In this regard, the learned counsel has also relied upon a Judgment of the Hon'ble Apex Court in the case of **Huidrom Konungjao Singh vs. State of Manipur and others**, reported in **2012 (3) MLJ (Cr1.) 794**, wherein, it is held that as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible, therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law. In the present case also, the second subjective satisfaction reached by the second respondent is without any basis, because there was no bail application and therefore, entertaining apprehension that the detenu would be released on bail is wholly without any vindictive. On this score, the impugned detention order is liable to be quashed. Thirdly, when the petitioner has given two representations, they were received on 14.08.2019 and 19.09.2019 respectively, but, after 14.08.2019, they have not even called for remarks and the concerned authorities have not even furnished any remarks till 23.10.2019. Therefore, from 15.08.2019 till 23.10.2019, there was a huge delay of 69 days. On this score also, the impugned detention order is liable to be set aside.

3. Mr.K.Dinesh Babu, learned Additional Public Prosecutor, submitted that when the representations dated Nil August 2019 and the second representation dated Nil were received by the respondent on 14.08.2019 and 19.08.2019 respectively, remarks were called for on the same day, but, they were received on 24.10.2019, in between



that period, there were 28 intervening Government Holidays and after excluding the Government Holidays, there were only 41 days' delay in considering the said representation. However, after receipt of the remarks, the representations were carefully considered with all seriousness and finding no merits in the representations, they were rejected on 30.10.2019 and immediately, it was also communicated to the petitioner. Therefore, there is no any serious delay.

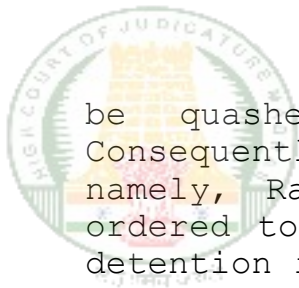
4. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

5. In this case, the Detention Order was passed on 02.08.2019. As against the same, the petitioner made two representations and the same have been received on 14.08.2019 and 19.09.2019 respectively, but, the remarks were received only on 24.10.2019, in between that period, there was a huge inordinate and unexplained delay of 69 days on the part of the Government in considering the representation. The copy of the proforma produced by the learned Additional Public Prosecutor shows that there are 28 intermittent Government holidays and even after excluding the holidays, there is a delay of 41 days, which is unexplained on the part of the detaining authority and hence, on the sole ground, the order of detention is liable to be interfered with.

6. 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.

7. 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.

8. 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 41 working days and when the respondents have not given any valid reasons explaining the delay of forty one days, 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, Rajenthiran, Son of Chinnasamy aged about 32 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1. The Additional Chief Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector / District Magistrate,
Trichy District,
Trichy.
3. The Superintendent of Prison,
Central Prison,
Trichy.
4. The Joint Secretary to Government,
Public (Law & order), Fort St. George,
Chennai - 9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.864 of 2019

06.02.2020

sr (CO)

TR (20.07.2020) 4P 6C