



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2020

CORAM:

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

AND

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

H.C.P. (MD)No.1074 of 2019

Sangeetha

.... Petitioner/Wife of the Detenu

Vs.

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise (IX) Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

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

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

.... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records on the file of the 2nd respondent in Detention Order No.50/2019 and to set aside the order of detention passed therein dated 11.08.2019 and to direct the respondents to produce the detenu, by name, Veerakumar, son of Rathinam, male, aged 26 years before this Court, now detained at Central Prison, Madurai and set him at liberty forthwith.

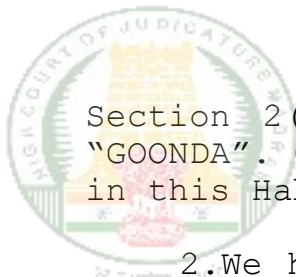
For Petitioner : Mr.J.William Chirstopher

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

ORDER

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

The petitioner is the wife of the detenu viz., Veerakumar, son of Rathinam, aged about 26 years. The detenu has been detained, as per the order of the second respondent, dated 11.08.2019, under



Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petitioner is before this Court in 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. As per the grounds of detention, dated 11.08.2019, the detenu came under adverse notice in one adverse cases and in the ground case, which was registered in Crime No.241/2019 on the file of the Palani Taluk Police Station, for the offence under Sections 147, 294(b), 323, 324 and 302 IPC.

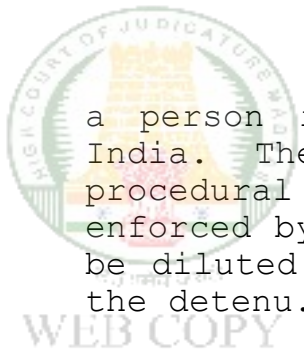
4. Learned counsel for the petitioner, assailed the impugned order, inter alia, on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was 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.

5. Learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was a 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.

6. We have considered the above submissions.

7. In this case, the Detention Order was passed on 11.08.2019. As against the same, the petitioner made a representation on 14.09.2019 and the same has been received on 23.09.2019 and the remarks were received on 30.10.2019 and the same has been dealt with on 27.11.2019. Finally, rejection order was passed on 29.11.2019. Since in between the date of file submitted and till the date of rejection order, there was a huge inordinate and unexplained delay of 27 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 8 intermittent Government holidays and even after excluding the holidays, there is a delay of 19 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.

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/detenue 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.

10. 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 19 working days and when the respondents have not given any valid reasons explaining the delay of nineteen 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, Veerakumar, S/o. Rathinam, aged about 26 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 (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Dindigul,
Dindigul District.



3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort.st.George, Chennai - 09
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1074 of 2019
03.02.2020

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