



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.03.2020**

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P. (MD) No. 1155 of 2019

Tamilarasi : Petitioner
Vs.

1. The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

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

4. The Inspector of Police,
Ponnamaravathi Police Station,
Pudukkottai,
Pudukkottai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order passed in P.D.O.No.37 of 2019 dated 10.08.2019 on the file of the second respondent and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Thamaraiselvam, aged about 28 years, S/o.Arumugam, now detained at Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Ms.A.Devaki

For Respondents : Mr.R.Anandharaj,
Additional Public Prosecutor

O R D E R

(Order of the Court was made by B.PUGALENDHI, J.)

The petitioner, namely, Tamilarasi, is the wife of the detenu and her husband has been detained by the second respondent vide order in P.D.O.No.37 of 2019 dated 10.08.2019. The said order is under challenge in this Habeas Corpus Petition.



2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. The learned Counsel for the petitioner would submit that there is a gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, 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.

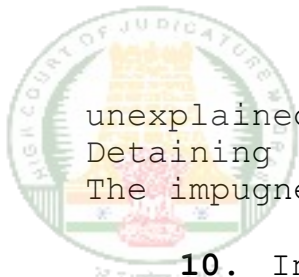
5. The Detention Order in question was passed on 10.08.2019. The petitioner made a representation on 10.10.2019, which was received on 17.10.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.10.2019. The remarks were duly received on 25.10.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.11.2019.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. Thereafter, there was another delay of 30 days in considering the representation, of which 8 days were Government Holidays, hence, there was another inordinate delay of 22 days in considering the representation.

7. In ***Rekha vs. State of Tamil Nadu***, reported in **2011 (5) SCC 244**, the Hon'ble Supreme Court has 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 undertaken by the detenu.

8. In ***Tara Chand vs. State of Rajasthan and others***, reported in **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 very detention illegal.

9. In the subject case, admittedly, there is an inordinate and



unexplained delay of 5 days in submitting the remarks by the Detaining Authority and 22 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.O.No.37 of 2019 dated 10.08.2019, passed by the second respondent is set aside. The detenu, namely, Thamaraiselvam, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS)

gk

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.
- 3.The Superintendent of Prison,
Central Prison, Trichy District.
- 4.The Inspector of Police,
Ponnamaravathi Police Station,
Pudukkottai,
Pudukkottai District.
- 5.The Joint Secretary to Government,
Public (Law & Order), Fort St.George,
Chennai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.DEVAKI, Advocate (SR-12798[F] dated 23/03/2020)

H.C.P. (MD) No.1155 of 2019

23.03.2020

AP(21/05/2020) 3P 8C