



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.02.2020**

CORAM:

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

AND

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

H.C.P. (MD)No.1245 of 2019

Poomathi

... Petitioner/wife of detenu

Vs.

1.State rep. by

The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector & District Magistrate

Karur,
Karur District.

3.The Superintendent,

Central Prison,
Trichy.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records pertaining to the impugned detention order passed by the 2nd Respondent and made in his proceedings in Cr.M.P.No.24/2019 dated 31.10.2019 in detaining the detenu under the Tamilnadu Act 14 of 1982 under Section 2(gg) as a SAND OFFENDER and quash the same and direct the respondents to produce the detenu, by name Somasundaram, S/o.Karupana Gounder, aged about 49 years, who is detained in Central Prison, Trichy, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.E.Somasundaram for
Mr.S.Santhanam Rajeshkumar

For Respondents

: Mr.K.Dinesh Babu
Additional Public Prosecutor



ORDER

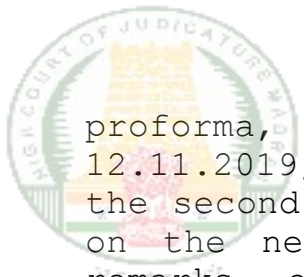
[Order of the Court was made by **T.RAJA, J.**]

Poomathi, wife of detenu, has come to this Court with this petition, challenging the correctness of the impugned detention order, dated 31.10.2019, passed by the second respondent, to quash the same as the detenu cannot be branded as a "Sand Offender".

2.Learned counsel appearing for the petitioner submitted that the detenu is the owner of the vehicle, who allegedly involved in carrying 2 units of river sand from Amaravathi river on 06.10.2019 in Karur. Suspecting that the detenu was responsible for smuggling two units of river sand, he was arrested on 06.10.2019 and immediately, thereafter, without there being any cause or foundation, leaving alone the reason, the second respondent, hurriedly passed the impugned detention order on 31.10.2019. Aggrieved by the impugned detention order, he has immediately gave a representation on 13.11.2019, but the same has not been considered by the respondents. Due to non-consideration of the representation, the claim of the detenu that he is an innocent person and not an offender has not been considered. Hence, the non-consideration of the detailed representation dated 13.11.2019 by the respondent vitiates the impugned detention order. According to the learned counsel, since it was only a solitary case, the representation should have been considered within time.

3.Taking support from Article 22(5) of the Constitution of India, learned counsel appearing for the petitioner, argued that as per mandatory condition adumbrated in sub clause (5) of Article 22 of the Constitution of India, when any person is detained, in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. But, in the present case, that has not been considered for long time. Therefore, the mandatory condition mentioned under sub clause (5) of Article 22 of the Constitution of India has been violated. Since the representation has not been considered at all, that would vitiate the impugned detention order. On this score alone, the impugned order is liable to be quashed. Consequently, the respondents may be directed to release the detenu forthwith.

4.A detailed counter affidavit has been filed by the second respondent. The learned Additional Public Prosecutor appearing for the respondents placing before us, a copy of the



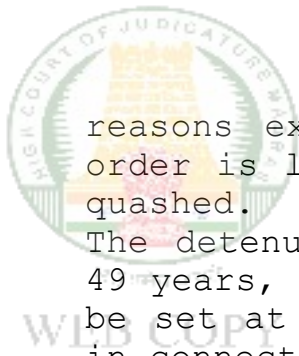
proforma, submitted that when two representations were made on 12.11.2019, the first representation was received on 18.11.2019, the second representation was received on 05.12.2019. Immediately on the next day, remarks was called for. On receipt of the remarks, on 24.01.2020, the remarks were in deep consideration. Since the second respondent's Office has taken time for considering the remarks from 18.11.2019 till 28.01.2020, there was a delay of 54 days with intervening 21 holidays (23.11.2019, 24.11.2019, 30.11.2019, 01.12.2019, 07.12.2019, 08.12.2019, 14.12.2019, 15.12.2019, 21.12.2019, 22.12.2019, 25.12.2019, 28.12.2019, 29.12.2019, 01.01.2020, 04.01.2020, 05.01.2020, 11.01.2020, 12.01.2020, 15.01.2020, 16.01.2020, 17.01.2020, 18.01.2020, 19.01.2020, 25.01.2020 and 26.01.2020). Hence, there was an actual delay of 33 days. He would further submit that 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 Article 22(5) of the Constitution of India.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. At this juncture, it is relevant to refer a decision of the Hon'ble Supreme Court in the case of **Rekha Vs. State of Tamil Nadu**, reported in [2011 (5) SCC 244], in which, 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 33 working days and when the respondents have not given any valid



reasons explaining the delay of 33 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 Somasundaram, S/o.Karupana Gounder, aged about 49 years, who is detained in Central Prison, Trichy, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other criminal proceedings.

Sd/-

Assistant Registrar(AE)

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/ /2020

Sub Assistant Registrar(CS)

To

The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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

3.The Superintendent,
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.

+1 CC to M/s.SANTHANAM RAJESH KUMAR, Advocate (SR-4984[F] dated 06/02/2020)

H.C.P. (MD)No.1245 of 2019
05.02.2020

DB(CO)
TR(13.03.2020)4P 7C