

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

H.C.P.No.163 of 2021

M.Lakshmi

... Petitioner

Vs.

1.State of Tamil Nadu rep. by
Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai-9

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

3.The Superintendent of Police
O/o.The Superintendent of Police
Chengalpattu District

4.The Superintendent of Central Prison
Puzhal, Chennai-66

5.The Inspector of Police
Thazhambur Police Station
Chengalpattu 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 records in memo No. BCDFGISSSV No.36/2020, dated 24.10.2020, on the file of the 2nd respondent herein to set aside the same and direct the respondents to produce the detenu i.e., the body of Raja, S/o.Manoharan, aged about 23 years, detained under Act 14 of 1982 in detention order BCDFGISSSV No.36/2020 dated 24.10.2020, herein now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Rajasekaran

For Respondents : Mr.R.Muniyapparaj
Government Advocate (Crl. Side)

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the mother of the detenu viz., Raja, S/o.Manoharan, aged about 23 years. The detenu has been detained by the 2nd respondent by his order dated 24.10.2020 in BCDFGISSSV No.36/2020, holding him to be a "GOONDA", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. 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 Government Advocate (Crl. Side) appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is 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 Government Advocate (Crl. Side) 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 Government Advocate (Crl. Side), 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 24.10.2020. The petitioner made a representation on 07.01.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.01.2021. The remarks were duly received on 03.02.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 08.02.2021.

6. It is the contention of the petitioner that there was a delay of 23 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holidays and hence,

there was an inordinate delay of 15 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 03.02.2021 and there was a delay of 2 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which there was no Government Holiday, hence, there was a delay of 2 days in considering the representation.

7. In *Rekha Vs. State of Tamil Nadu* [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 *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 would be sufficient to set aside the order of detention.

9. 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 15 days in submitting the remarks by the Detaining Authority and delay of 2 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. The impugned detention order is, therefore, liable to be quashed.

In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.36/2020, dated 24.10.2020, passed by the 2nd respondent is set aside. The detenu viz., Raja, S/o.Manoharan, aged 23 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-9.
- 2.The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat, Chennai-9.
- 3.The District Collector and District Magistrate,
Chengalpattu District, Chengalpattu.
- 4.The Superintendent of Police,
O/o.The Superintendent of Police,
Chengalpattu District.
- 5.The Superintendent of Central Prison,
Puzhal, Chennai-66.
- 6.The Inspector of Police,
Thazhambur Police Station,
Chengalpattu District.
- 7.The Public Prosecutor,
High Court, Madras.

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