

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

H.C.P.No.154 of 2021

E.Visalatchi

W/o.Elaiyaperumal

.. Petitioner/Wife of detenue

Vs.

- 1.The State represented by
The Secretary to Government,
Government of Tamilnadu,
Home, Prohibition and Excise IX,
Secretariat, St.George Fort,
Chennai - 600009.
 - 2.The District Collector cum District Magistrate,
The District Collectorate,
Cuddalore District.
 - 3.The Superintendent of Police,
The Superintendent of Police Office,
Cuddalore District.
 - 4.The Superintendent of Prison,
Central Prison,
Cuddalore.
 - 5.The Inspector of Police,
Old Town Police Station,
Cuddalore.
- .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the records of the first respondent in T.P.D.A 3614 dated 19.11.2020 with reference to (Detention Order No.C3/DO/127/2020) dated 19.11.2020, setting aside the order of detention passed therein and directing the respondent to produce the detenu, namely, Elaiyaperumal S/o.Duraikannu, before this Court, now detained at Central Jail, Cuddalore and setting him at liberty.

For Petitioner : Mr.V.Gunasekar

For Respondents: Mr.R.Muniyapparaj
Government Advocate [Crl.side]

ORDER

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

The petitioner is the wife of the detenu viz., Elaiyaperumal S/o.Duraikannu, aged about 59 years. The detenu has been detained by the second respondent by his order in C3/DO/127/2020 dated 19.11.2020, holding him to be a "Bootlegger", as contemplated under Section 2(b) 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] strongly opposed the Habeas Corpus Petition by filing his counter. 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 19.11.2020. The petitioner made a representation on 16.12.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.12.2020. The remarks were duly received on 05.01.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.01.2021.

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 3 days were Government Holidays and hence there was an inordinate delay of 4 days in submitting the remarks. It is the further contention of

the petitioner that the remarks were received on 05.01.2021 and there was a delay of 3 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it. Hence, there was inordinate delay of 7 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable 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 Honourable 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 4 days in submitting the remarks by the Detaining Authority and unexplained delay of 3 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 C3/DO/127/2020 dated 19.11.2020, passed by the second respondent is set aside. The detenu, viz., Elaiyaperumal S/o.Duraikannu, aged about 59 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamilnadu,
Home, Prohibition and Excise IX,
Secretariat, St.George Fort,
Chennai - 600009.
- 2.The District Collector cum District Magistrate,
The District Collectorate,
Cuddalore District.
- 3.The Superintendent of Police,
The Superintendent of Police Office,
Cuddalore District.
- 4.The Superintendent of Prison,
Central Prison,
Cuddalore.
- 5.The Inspector of Police,
Old Town Police Station,
Cuddalore.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Joint Secretary to Government,
Public(Law & Order),
Fort St George, Chennai-9.

H.C.P.No.154 of 2021

KU(CO)
CS(13/07/2021)

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