



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.896 of 2021

Nagarajan

...Petitioner/Husband of Detenue

Vs.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George
Chennai 600 009
2. The District Collector-cum-District Magistrate
Villupuram, Villupuram District
3. The Superintendent of Police
Villupuram
4. The Superintendent
Central Prison, Villupuram
5. The Inspector of Police
Villupuram Town

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records pertaining to the order of the second respondent dated 04.05.2021 in Rc.No.C2/11082/2021 detaining the detenue Tmt. Kumari, W/o Nagarajan, aged 50 years as "bootlegger" under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the said detenue, now detained in the Central Prison, Villupuram, before this Court and set her at liberty.

For petitioner : Mrs. V. Mythili Srinivas

For respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



O R D E R

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

WEB COPY The petitioner is the husband of the detenue viz., Kumari, W/o.Nagarajan, aged about 50 years. The detenue has been detained by the 2nd respondent by his order dated 04.05.2021 in Rc.No.C2/11082/2021, holding her 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 Additional Public Prosecutor 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 Additional Public Prosecutor has filed his counter affidavit and strongly 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 detenue 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 04.05.2021. The petitioner made a representation on 17.05.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.05.2021. The remarks were duly received on 09.06.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.07.2021.

6. It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which 6 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 09.06.2021 and there was a delay of 3 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 1 day was a 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 detainee.

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 detainee 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 a delay of 2 days in considering the representation by the Hon'ble Minister for Home, 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 Rc.No.C2/11082/2021, dated 04.05.2021, passed by the 2nd respondent is set aside. The detainee viz., Kumari, W/o.Nagarajan, aged about 50 years, is directed to be released forthwith, unless her detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St. George
Chennai 600 009
2. The Joint Secretary to Government
Public, Law and Order Department
Secretariat, Chennai 600 009
3. The District Collector-cum-District Magistrate
Villupuram
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6. The Inspector of Police
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7. The Public Prosecutor
High Court, Madras

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RLD (CO)
K.RK. (16.11.2021)