

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE V.SIVAGNANAM

H.C.P.No.1370 of 2020

Chinarasu

... Petitioner

Vs.

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

2.The District Collector and District Magistrate
O/o.The District Collector and District Magistrate
Tirupathur District, Tirupathur

3.The Superintendent of Police
Tirupathur

4.The Superintendent of Prison
Special Prison for Women
Vellore, Vellore District

5.The Inspector of Police
Vaniyambadi Taluk Police Station
Tirupathur District

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records relating to the detention order in C3/D.O.No.26/2020 dated 16.07.2020, passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and consequently, direct the respondents to produce the petitioner's mother Maheswari, W/o.Srinivasan, aged about 39 years, now confined in Special Prison for Women, Vellore before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by V.SIVAGNANAM, J.]

The petitioner is the son of the detainee viz. Maheswari, W/o.Srinivasan, aged about 39 years,. The detainee has been detained by the 2nd respondent by his order in C3/D.O.No.26/2020 dated 16.07.2020 holding her to be a "Drug Offender", as contemplated under Section 2(e) 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 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 detainee 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 16.07.2020. The petitioner made a representation on 03.08.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.08.2020. The remarks were duly received on 25.09.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.11.2020.

6. It is the contention of the petitioner that there was a delay of 47 days in submitting the remarks by the Detaining Authority, of which 14 days were Government Holidays and hence, there was an inordinate delay of 33 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 25.09.2020 and there was a delay of 40 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 15 days were Government Holidays, hence, there was inordinate delay of 25 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 detinue.

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 detinue 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 33 days in submitting the remarks by the Detaining Authority and unexplained delay of 25 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/D.O.No.26/2020 dated 16.07.2020, passed by the 2nd respondent is set aside. The detenue viz. Maheswari, W/o.Srinivasan, aged about 39 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

//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 District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Tirupathur District, Tirupathur.
- 3.The Superintendent of Police,
Tirupathur.
- 4.The Superintendent of Prison,
Special Prison for Women,
Vellore, Vellore District.
- 5.The Inspector of Police,
Vaniyambadi Taluk Police Station,
Tirupathur District.
- 6.The Public Prosecutor,
High Court, Madras.

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