

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

Coram

The Hon'ble Mr. Justice P.N.PRAKASH
and

The Hon'ble Mr. Justice V.SIVAGNANAM

H.C.P.No.1436 of 2020

Kirithika

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai City
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.

3.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai - 7.

4.The Superintendent of Prison,
Central Prison - Puzhal,
Chennai - 600 066.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the records pursuant to the order in 253/BCDFGISSSV/2020 passed by the 2nd respondent and quash the same, consequently produce the detenu Surendar @ Nathigan, aged about 33 years, S/o.Natarajan, before this Court and set him at liberty and the detenu now confined in Central Prison, Salem.

For Petitioner : Mr.V.Prathiban

For Respondents: Mr.R.Prathap Kumar,
Addl.Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu, Surendar @ Nathigan, S/o.Natarajan, aged about 33 years. The detenu has been detained by the second respondent by his order dated 26.07.2020 in Memo No.253/BCDFGISSSV/2020, holding him to be a "Cyber Law Offender", as contemplated under Section 2(bb) 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 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 detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India. He also filed his counter affidavit.

5. The Detention Order in question was passed on 26.07.2020. The petitioner made a representation on 04.07.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.09.2020. The remarks were duly received on 18.09.2020. 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 6 days in submitting the remarks by the Detaining Authority, of which 1 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 18.09.2020 and there was a delay of 47

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 17 days were Government Holidays, hence, there was inordinate delay of 30 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 5 days in submitting the remarks by the Detaining Authority and unexplained delay of 30 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.253/BCDFGISSSV/2020, dated 26.07.2020, passed by the second respondent is set aside. The detenu, viz., Surendar @ Nathigan, S/o. Natarajan, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

nsd

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai City
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
- 3.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 4.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai - 7.
- 5.The Superintendent of Prison,
Central Prison - Puzhal,
Chennai - 600 066.
- 6.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1436 of 2020

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