

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.1622 of 2020

M.Mala

..Petitioner/Mother of
the detenue

Vs.

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George, Chennai 9

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

3.The Superintendent of Police
O/o.The Superintendent of Police
Thiruvallur, Thiruvallur District

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

5.State rep. by its
The Inspector of Police
Minjur Circle Police Station
Thiruvallur District

... Respondents

Petition filed under Article 226 of the
Constitution of India, praying to issue a WRIT OF
HABEAS CORPUS to call for the entire records relating
to the petitioner's son detention under Tamil Nadu Act
14 of 1982 vide detention order, dated 18.08.2020 on
the file of the 2nd respondent herein made in
proceedings BCDFGISSSV No.33/2020, quash the same as

illegal and consequently direct the respondents herein to produce the petitioner's son namely Mohan, S/o.Moorthy, aged 21 years before this Hon'ble Court and set the petitioner's son at liberty from detention, now the petitioner's son is detained at Central Prison-II, Puzhal, Chennai.

For Petitioner : Mr.R.Sasikumar

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 mother of the detenu viz. Mohan, S/o.Moorthy, aged 21 years. The detenu has been detained by the 2nd respondent by his order dated 18.08.2020 in BCDFGISSSV No.33/2020, holding him to be a "Goondas", 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 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.

5. The Detention Order in question was passed on 18.08.2020. The petitioner made a representation on 29.08.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 02.09.2020. The remarks were duly received on 12.11.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 17.11.2020.

6. It is the contention of the petitioner that there was a delay of 71 days in submitting the remarks by the Detaining Authority, of which 23 days were Government Holidays and hence, there was an inordinate delay of 48 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 12.11.2020 and there was a delay of 4 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 2 days were Government Holidays, hence, there was inordinate 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 48 days in submitting the remarks by the Detaining Authority and unexplained 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.33/2020, dated 18.08.2020, passed by the second respondent is set aside. The detenu viz., Mohan, S/o.Moorthy, aged 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar (CS VIII)

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 9

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

3.The Superintendent of Police
O/o.The Superintendent of Police
Thiruvallur, Thiruvallur District

4.The Superintendent of Prison
Central Prison-II
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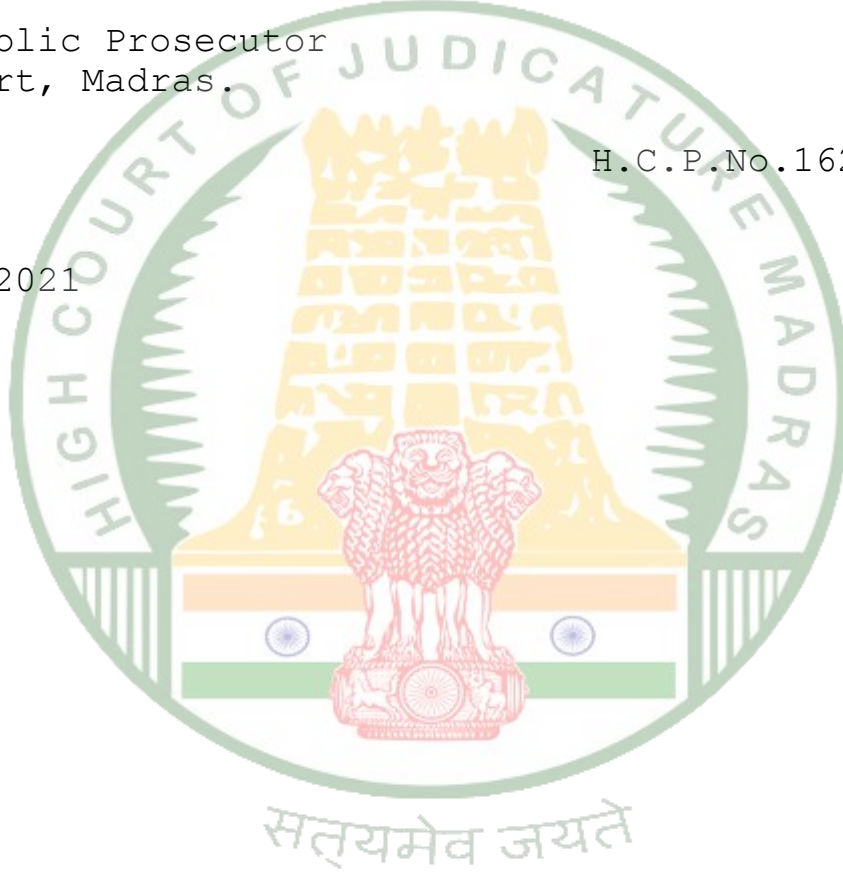
5.The Inspector of Police
Minjur Circle Police Station
Thiruvallur District.

6. The Joint Secretary to Government
(law & order) Fort St. George, Chennai.

7.The Public Prosecutor
High Court, Madras.

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VBA(CO)
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