IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

Coram

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

H.C.P.No.1699 of 2020

E.Eswari .. Petitioner

Vs.

1.The Secretary to Government,
(Home), Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.

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

3.The Superintendent of Police,
O/o.Superintendent Office,
Salem District,
Salem.

4.The Superintendent of Prison,
Central Prison - Salem,
Salem District.

5.State represented by
The Inspector of Police,
Thalaivasal Police Station,
Salem District. .. Respondents

WEB COPY

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 31.08.2020 on the file of the second respondent herein made in proceedings C.M.P.No.09/B.L.A./C2/2020, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband viz., Elavarasan, S/o.Soundharam, aged 31 years, before this Court and set the petitioner's husband at

https://hcservices.ecourts.gov.in/hcservices/

liberty from detention, now the petitioner's husband detained at Central Prison, Salem, Chennai.

For Petitioner : Mr.R.Sasikumar

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, Elavarasan, S/o.Soundharam, aged 31 years. The detenu has been detained by the second respondent by his order dated 31.08.2020 in C.M.P.No.09/B.L.A./C2/2020, holding him to be a "Bootlegger", as contemplated under Section 2(b) of the 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 31.08.2020. The petitioner made a representation on 17.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.09.2020. The remarks were duly received on 29.10.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

representation on 06.11.2020.

6. It is the contention of the petitioner that there was a delay of 40 days in submitting the remarks by the Detaining Authority, of which 14 days were Government Holidays and hence there was an inordinate delay of 26 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 29.10.2020 and there was a delay of 6 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 3 days were Government Holidays, hence, there was inordinate delay of 3 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 26 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.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.09/B.L.A./C2/2020 dated 31.08.2020, passed by the second respondent is set aside. The detenu, viz.,Elavarasan, S/o.Soundharam, aged 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

nsd
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 & Order
Department Fort St.George
Secretariate
Chennai-09

3.The District Collector and District Magistrate,
Salem District,
Salem.

4.The Superintendent of Police,
O/o.Superintendent Office,
Salem District,
Salem.

5.The Superintendent of Prison,
Central Prison - Salem,
Salem District.

6.The Inspector of Police,
Thalaivasal Police Station,
Salem District.

7.The Public Prosecutor,
High Court, Madras.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8.The Joint Secretary to Government
Public Law & order Department
Fort St.George
Secretariate
Chennai-09

H.C.P. No.1699 of 2020

gml(co)
aa15/03/2021

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/