



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P.No. 1174 of 2021

Elumalai

...Petitioner

Vs.

1. The Secretary to the Government
Home Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
3. The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
4. The Superintendent of Prison,
Special Prison for Women, Vellore-2
5. The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai 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 in connection with the order of detention passed by the second respondent dated 28.07.2021 in D.No.57/2021-C2 against the petitioner's wife Bharathi, female, aged 55 years, W/o. Elumalai, who is confined at Special Prison for Women, Vellore, and set aside the same and direct the respondents to produce the detainee before the this Court and set her at liberty.

For petitioner :Mr. S. Senthilvel

For respondents :Mr.R.Muniyapparaj,

Additional Public Prosecutor.



O R D E R

[Order of the Court was made by R.HEMALATHA, J.]

WEB COPY The detenu is the wife of the petitioner herein. She has been detained by the 2nd respondent by his order dated 28.07.2021 in D.No.57/2021-C2, holding her 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 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 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 28.07.2021. The petitioner made a representation on 19.08.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.08.2021. The remarks were duly received on 29.09.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 29.10.2021.

6. It is the contention of the petitioner that there was a delay of 36 days in submitting the remarks by the Detaining Authority, of which 12 days were Government Holidays and hence, there was a delay of 24 days in submitting the remarks. It is



the further contention of the petitioner that the remarks were received on 29.09.2021 and there was a delay of 6 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 2 days were Government Holidays, hence, there was an unexplained delay of 4 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 24 days in submitting the remarks by the Detaining Authority and an unexplained delay of 4 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 D.No.57/2021-C2 dated 28.07.2021, passed by the 2nd respondent is set aside. The detenue Bharathi, female, aged 55 years, W/o. Elumalai, is directed to be released forthwith, unless her detention is required in connection with any other case.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



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4. The Superintendent of Prison,
Special Prison for Women, Vellore-2
5. The Inspector of Police,
Tiruvannamalai PEW Police Station,
Tiruvannamalai District.
6. The Joint Secretary to Government,
Public, Law and Order Department,
Secretariat, Chennai 600 009.
7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1174 of 2021

PL(CO)
SP(15/12/2021)