

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice KRISHNAN RAMASAMY

H.C.P.No.1741 of 2020

K.Martha

.. Petitioner

Vs.

- 1.State of Tamil Nadu,
Represented by its Secretary,
Government of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.Office of the District Collector and District Magistrate,
Tirupattur, Tirupattur District - 635 601.
- 3.The Superintendent of Police,
Tirupattur.
- 4.The Superintendent of Prison,
Special Prison for Women, Vellore.
- 5.The Inspector of Police,
Tirupattur Taluk Police Station,
Tirupattur.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus calling for the records of the detention order in C3/D.O.No.34/2020 dated 31.08.2020 on the file of the second respondent and quash the same and produce the body of the petitioner's mother Malliga, W/o.Antony, aged about 40 years, confined at Special Prison for Women, Vellore, before this Court and set her at liberty.

For Petitioner : Mr.Udaya Kumar
for M/s.Karan and Uday

For Respondents: Mr.L.Charles Premkumar
Government Advocate (Crl.Side)

ORDER

[Order of the Court was made by KRISHNAN RAMASAMY, J.]

The petitioner is the daughter of the detainee, Malliga, W/o. Antony, aged about 40 years. The detainee has been detained by the second respondent by his order dated 31.08.2020 in C3/D.O.No.34/2020, 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 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 31.08.2020. The petitioner made a representation on 22.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.10.2020. The remarks were duly received on 21.10.2020. 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 9 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 7 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 21.10.2020 and there was a delay of 14

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 6 days were Government Holidays, hence, there was inordinate delay of 8 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 detainee.

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 detainee 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 7 days in submitting the remarks by the Detaining Authority and unexplained delay of 8 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 C3/D.O.No.34/2020, dated 31.08.2020, passed by the second respondent is set aside. The detainee, viz., Malliga, W/o.Antony, aged about 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

- 1.The Secretary,
Government of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirupattur, Tirupattur District - 635 601.
- 3.The Superintendent of Police,
Tirupattur.
- 4.The Superintendent of Prison,
Special Prison for Women, Vellore.
- 5.The Inspector of Police,
Tirupattur Taluk Police Station,
Tirupattur.
- 6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
- 7.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1741 of 2020

KV(CO)
RG.19/04/2021

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