

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.1815 of 2020

Poongothai,
W/o.Mukuttu Murugan @ Murugan ... Petitioner/
Wife of the detenue
versus

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and
District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Prison,
Central Prison, Tiruchirappalli.
- 4.The Superintendent of Police,
Nagapattinam District, Nagapattinam.
- 5.The Inspector of Police,
Sirkazhi Police Station,
Nagapattinam District. ... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in C.O.C.No.47/2020 dated 15.09.2020 in detaining the detenue under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely, Mukuttu Murugan @ Murugan, son of Balakrishnan, Male, aged about 43 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu, Mukkuttu Murugan @ Murugan, son of Balakrishnan, aged about 43 years. The detenu has been detained by the second respondent by its order dated 15.09.2020 in C.O.C.No.47/2020, holding him to be a "Goonda", as contemplated under Section 2(f) 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 this Petition, 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 this 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 15.09.2020. The petitioner made a representation on 24.09.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.09.2020. The remarks were duly received on 18.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.01.2021.

6. It is the contention of the petitioner that there was a delay of 80 days in submitting the remarks by the Detaining Authority, of which 14 days were Government Holidays and hence, there was an inordinate delay of 66 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 18.12.2020 and

there was a delay of 22 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 16 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 66 days in submitting the remarks by the Detaining Authority and unexplained delay of 16 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 C.O.C.No.47/2020 dated 15.09.2020, passed by the second respondent is set aside. The detenu, viz. Mukkuttu Murugan @ Murugan, son of Balakrishnan, aged about 43 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Assistant Registrar

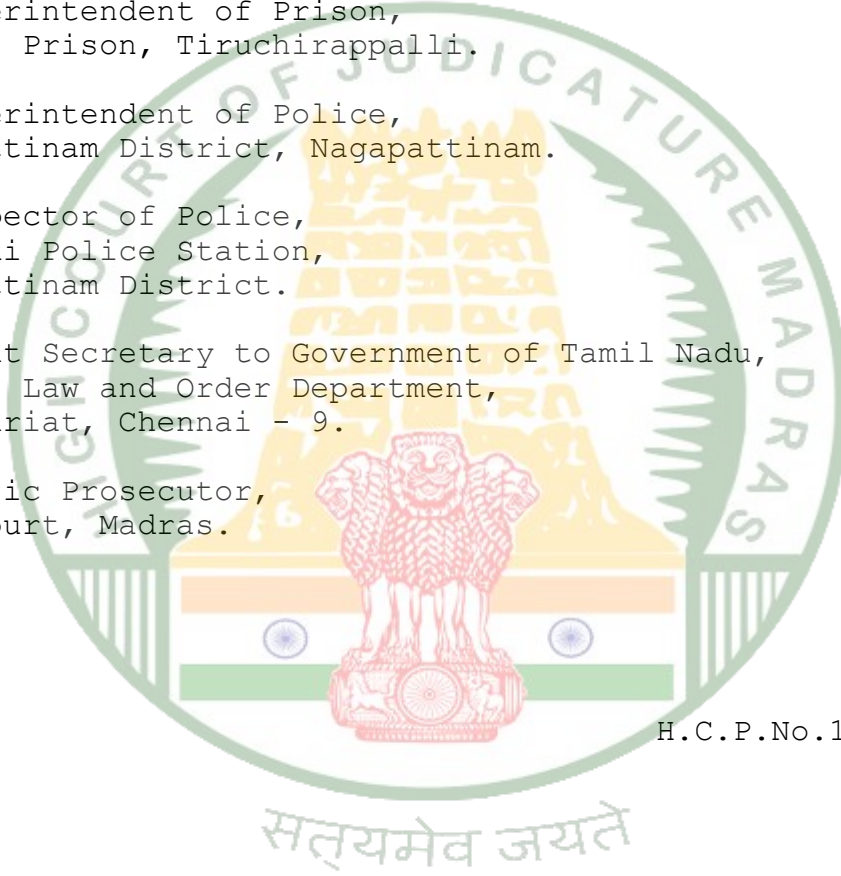
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Sub Assistant Registrar

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To

- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and
District Magistrate,
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- 3.The Superintendent of Prison,
Central Prison, Tiruchirappalli.
- 4.The Superintendent of Police,
Nagapattinam District, Nagapattinam.
- 5.The Inspector of Police,
Sirkazhi Police Station,
Nagapattinam District.
- 6.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.
- 7.The Public Prosecutor,
High Court, Madras.



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JP-II (CO)
RN(22/04/2021)

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