

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

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

H.C.P.No.1889 of 2020

Sathiyaraj,
S/o.Elumalai

...

Petitioner /
Son of the detenu

versus

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and
District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Prohibition Enforcement Wing,
Polur.

सत्यमेव जयते

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 26.09.2020 in D.O.No.103/2020-C2 against the petitioner's father Elumalai, Male, aged 45 years, son of Kumar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
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 son of the detenu, Elumalai, son of Kumar, aged about 45 years. The detenu has been detained by the second respondent by its order dated 26.09.2020 in D.O.No.103/2020-C2, 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 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 has filed a counter and strongly 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 26.09.2020. The petitioner made a representation on 03.10.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.10.2020. The remarks were duly received on 27.11.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.12.2020.

6. It is the contention of the petitioner that there was a delay of 48 days in submitting the remarks by the Detaining Authority, of which 11 days were Government Holidays and hence, there was an inordinate delay of 37 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 27.11.2020 and

there was a delay of 3 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 1 day was Government Holiday, 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 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 37 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.103/2020-C2 dated 26.09.2020, passed by the second respondent is set aside. The detenu, viz. Elumalai, son of Kumar, aged about 45 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

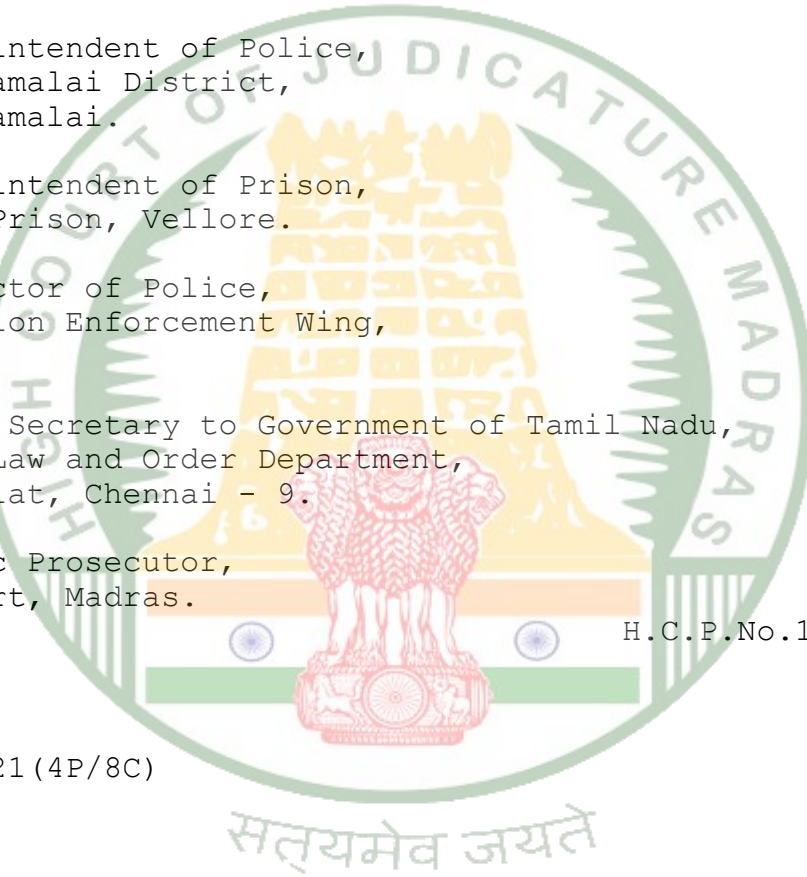
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To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and
District Magistrate,
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Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Prohibition Enforcement Wing,
Polur.
- 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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GPL (CO)
RG.28.04.2021 (4P/8C)



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