

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice R.PONGIAPPAN

H.C.P.No.1985 of 2020

Durai

.. Petitioner/Detenu's
Husband

Vs.

- 1.The Secretary to Government,
Government of Tamil Nadu,
(Home), Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police,
Nagapattinam District, Nagapattinam.
- 4.The Superintendent,
Central Prison for Women,
Thiruchirapalli.
- 5.The Inspector of Police,
Prohibition Enforcement Wing,
Sirkazhi, Nagapattinam.

.. Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the order of the 2nd respondent herein concerned in C.O.C.No.48/2020 dated 15.09.2020 and quash the order of detention passed therein by the 2nd respondent herein against the detenu and directing the respondents herein to produce the body and person of the detenu by name Selvi, wife of Durai, aged about 45 years, now detained at Central Prison for Women, Thiruchirapalli, before this Court and set her at liberty forthwith.

For Petitioner : Mr.K.Balu
For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the husband of the detinue viz., Selvi, wife of Durai, aged about 45 years. The detinue has been detained by the second respondent by his order in C.O.C.No.48/2020 dated 15.09.2020, holding him to be a "Bootlegger", as contemplated under Section 2(b) 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 detinue 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 15.10.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.10.2020. The remarks were duly received on 08.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.01.2021.

6. It is the contention of the petitioner that there was a delay of 49 days in submitting the remarks by the Detaining Authority, of which 16 days were Government Holidays and hence there was an inordinate delay of 33 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 08.12.2020 and there was a delay of 32 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 11 days were Government Holidays, hence, there was inordinate delay of 21 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 33 days in submitting the remarks by the Detaining Authority and unexplained delay of 21 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.

In the result, the Habeas Corpus Petition is allowed and the order of detention in C.O.C.No.48/2020 dated 15.09.2020, passed by the second respondent is set aside. The detainee, viz., Selvi, wife of Durai, aged about 45 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

Assistant Registrar (CS VII)

True Copy

nsd

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
(Home), Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Police,
Nagapattinam District, Nagapattinam.
- 4.The Superintendent,
Central Prison for Women,
Thiruchirapalli.
- 5.The Inspector of Police,
Prohibition Enforcement Wing,
Sirkazhi, Nagapattinam.
- 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.1985 of 2020

JP(CO)
EU 12.05.2021

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