

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2021

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH  
and

The Hon'ble Ms. Justice R.N.MANJULA

H.C.P. No.2122 of 2020

Kamaleswari

... Petitioner/Mother of the detenu

-vs-

- 1.The Secretary to the Government,  
Home Prohibition and Excise Department,  
Secretariat, Chennai 600 009.
2. The Commissioner of Police,  
Salem City, O/o. Commissioner of Police,  
Linemedu, Salem 636 006.
3. The Superintendent of Prison,  
Central Prison- Salem,  
Salem District.
4. State rep.by its  
The Inspector of Police,  
Pallapatty Police Station,  
Salem District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records, relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 16.10.2020 on the file of the second respondent herein made in proceedings Memo C.M.P.No.52/Goonda/Salem City/2020, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son name Prasanth @ Ramki, S/o.Annaiyyan, aged 24 years before this Hon'ble High Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Salem.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.R.Muniyapparaj

Government Advocate (Crl. Side)

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the mother of the detenu - Prasanth @ Ramki, S/o.Annaiyyan, aged about 24 years. The detenu has been detained by the second respondent by his order in C.M.P.No.52/Goonda/Salem City/2020 dated 16.10.2020, holding him to be a "Goonda", as contemplated under Section 2(f) 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 Government Advocate (Criminal Side) 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 Government Advocate (Criminal Side) 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 Government Advocate (Criminal Side), 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 16.10.2020. The petitioner made a representation on 04.11.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.11.2020. The remarks were duly received on 12.11.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.11.2020.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 12.11.2020 and there was delay of 11 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 5 days were Government Holidays, hence, there was inordinate delay of 6 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 5 days in submitting the remarks and 6 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.M.P.No.52/Goonda/Salem City/2020 dated 16.10.2020, passed by the second respondent is set aside. The detenu, namely, Prasanth @ Ramki, S/o. Annaiyyan, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mmi/Vv

To

1. The Secretary to the Government,  
Home Prohibition and Excise Department,  
Secretariat, Chennai 600 009.

2. The Commissioner of Police,  
Salem City, O/o.Commissioner of Police,  
Linemedu, Salem 636 006.

3. The Superintendent of Prison,  
Central Prison- Salem,  
Salem District.

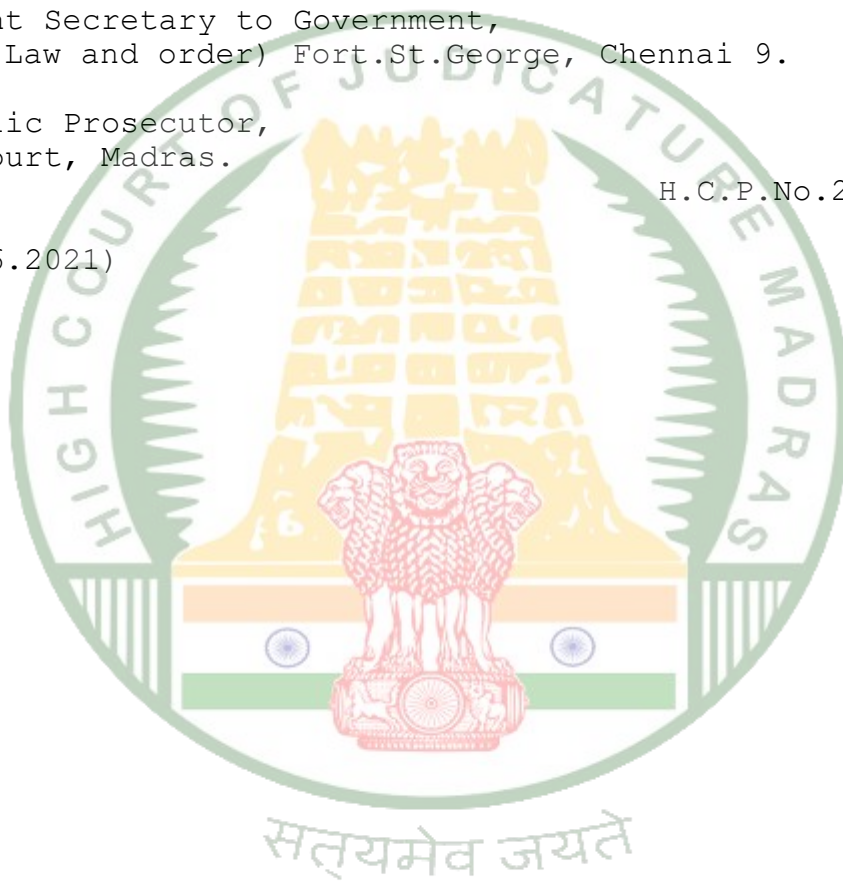
4.The Inspector of Police,  
Pallapatty Police Station,  
Salem District.

5.The Joint Secretary to Government,  
Public (Law and order) Fort.St.George, Chennai 9.

6.The Public Prosecutor,  
High Court, Madras.

H.C.P.No.2122 of 2020

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