

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2021

Coram

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

AND

THE HON'BLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.2209 of 2020

Indira

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Police,
Ariyalur District, Ariyalur.
- 4.The Superintendent,
Central Prison,
Tiruchirappalli.
- 5.The Inspector of Police,
Sendurai Police Station,
Ariyalur District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records in CrI.M.P.No.73/2020 dated 15.10.2020 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondent to produce the petitioner's son Rajesh, Son of Gurunathan, aged 30 years, who is now detained at Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhi Kumar

For Respondents: Mr.R.Muniyapparaj,
Government Advocate (Criminal Side)

O R D E R

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

The petitioner is the mother of the detenu, Rajesh, Son of Gurunathan, aged 30 years, who is now detained at Central Prison, Tiruchirappalli under Act 14 of 1982 (Tamil Nadu Act). The detenu has been classified as a "Goonda" by the 2nd respondent in his order of detention vide CrI.M.P.No.73/2020 dated 15.10.2020. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard Mr.K.Gandhi Kumar, learned counsel appearing for the petitioner and Mr.R.Muniyapparaj, 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 were not considered on time and there was an inordinate and unexplained delay.

4.The learned Government Advocate opposed the Habeas Corpus Petition and submitted 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, 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 15.10.2020. A representation was also given. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 09.01.2021.

6.It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holidays and hence there was an inordinate delay of 17 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 22.12.2020 and there was delay of 18 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, and there was an inordinate delay of 13 days, hence, there was an inordinate delay of 30 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 17 days in submitting the remarks by the Detaining Authority and unexplained delay of 13 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 CrI.M.P.No.73/2020 dated 15.10.2020, passed by the second respondent is set aside. The detenu, namely, Rajesh, Son of Gurunathan, aged 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

WEB COPY

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

va
To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 3.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 4.The Superintendent of Police,
Ariyalur District, Ariyalur.
- 5.The Superintendent,
Central Prison,
Tiruchirappalli.
- 6.The Inspector of Police,
Sendurai Police Station,
Ariyalur District.
- 7.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2209 of 2020

gmi[co]
srg 14/06/2021

सत्यमेव जयते

WEB COPY