

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2021

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Ms. Justice R.N.MANJULA

H.C.P. No.2270 of 2020

Gomathy

... Petitioner

-vs-

1. State of Tamil Nadu
Rep by the Secretary,
Home Prohibition and Excise Department,
Fort St.George, Chennai 600 009.
2. The District Collector and District Magistrate
of Ranipet District,
Office of the District Collector and District Magistrate,
Ranipet District, Ranipet-1.
3. The Superintendent of Prison,
Central Prison, Vellore,
Vellore District.
4. The Superintendent of Police,
Vellore District.
5. The Inspector of Police,
Arcot Town Police Station,
Vellore District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the Detention Order vide Memo B3/D.O.No.111/2020 dated 08.11.2020, passed by the Second Respondent and quash the same and direct the respondents herein to produce the petitioner's husband namely Jayakumar S/o.Rajendran, aged about 32 years (who is presently under going detention in the Central Prison, Vellore) before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.N.Arun Kumar
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 wife of the detenu - Jayakumar S/o.Rajendran, aged about 32 years. The detenu has been detained by the second respondent by his order in Memo B3/D.O.No.111/2020 dated 08.11.2020, 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 08.11.2020. The petitioner made a representation on 18.11.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.11.2020. The remarks were duly received on 22.12.2020. 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 32 days in submitting the remarks by the Detaining Authority, of which 10 days were Government Holidays and hence there was an inordinate delay of 22 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 6 days were Government Holidays, hence, there was inordinate delay of 12 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 22 days in submitting the remarks and 12 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 Memo B3/D.O.No.111/2020 dated 08.11.2020, passed by the second respondent is set aside. The detenu, namely, Jayakumar S/o.Rajendran, aged about 32 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,
Fort St.George, Chennai 600 009.

2. The District Collector and District Magistrate of Ranipet District,
Office of the District Collector and District Magistrate,
Ranipet District, Ranipet-1.

3. The Superintendent of Prison,
Central Prison, Vellore,Vellore District.

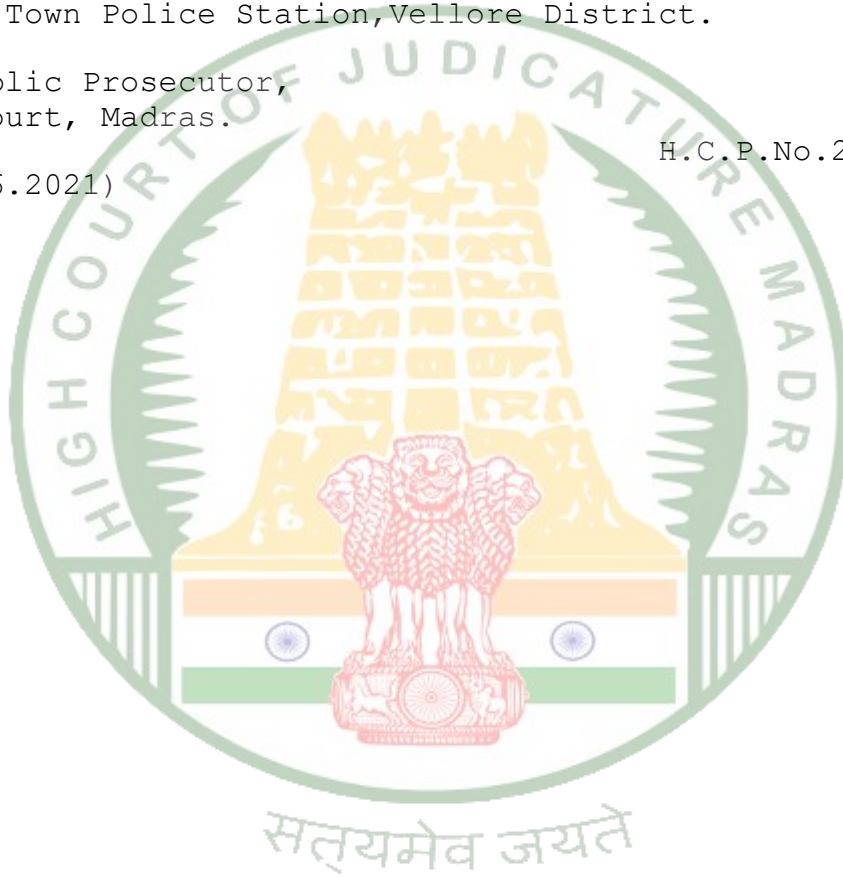
4. The Superintendent of Police,Vellore District.

5. The Inspector of Police,
Arcot Town Police Station,Vellore District.

6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2270 of 2020

A.SK(10.06.2021)



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