

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE V.SIVAGNANAM

H.C.P.No.2359 of 2020

S.Mangaiyarkarasi ... Petitioner /Wife of Detenue

Vs.

1.The State of Tamil Nadu
Rep. by its Additional Chief
Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009

2.The Inspector General of Police
(Law and Order)
Thiruchirapali
Thiruchirapali District

3.The Deputy Inspector General of Police
Thanjavur Range
Thanjavur

4.The District Collector and District Magistrate
Nagapattinam District
Nagapattinam

5.The Superintendent of Police
O/o.Superintendent of Police
Nagapattinam District

6.The Superintendent of Prison
Central Prison
Thiruchirapalli

7.State represented by
The Inspector of Police
(Law and Order)
Poraiyur Village & Post
Tharangambadi Taluk
Nagapattinam

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 25.07.2020 on the file of the District Collector, Nagapattinam District the 4th respondent herein and made in proceedings C.O.C.No.30 of 2020 and quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband namely N.Senguttuvan, son of Late Nagarajan, Hindu, aged about 42 years, who is detained in Central Prison, Thiruchirapalli in TPDA No.9162 before this Court and set the petitioner's husband at liberty from detention.

For Petitioner : Mr.Dalit Tiger C.Ponnusam

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by V.SIVAGNANAM, J.]

The petitioner is the wife of the detenu, N.Senguttuvan, son of Late Nagarajan, Hindu, aged about 42 years. The detenu has been detained by the 4th respondent by his order dated 25.07.2020 in C.O.C.No.30 of 2020, holding him to be a "Sand Offender", as contemplated under Section 2(gg) 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 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 25.07.2020. The petitioner made a representation dated Nil. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.08.2020. The remarks were duly received on 21.09.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.11.2020.

6. It is the contention of the petitioner that there was a delay of 39 days in submitting the remarks by the Detaining Authority, of which 10 days were Government Holidays and hence, there was an inordinate delay of 29 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 21.09.2020 and there was a delay of 44 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 15 days were Government Holidays, hence, there was inordinate delay of 29 days in considering the representation.

7. In *Rekha Vs. State of Tamil Nadu* [2011 (5) SCC 244], the Hon'ble 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 Hon'ble 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 29 days in submitting the remarks by the Detaining Authority and unexplained delay of 29 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.30 of 2020, dated 25.07.2020, passed by the fourth respondent is set aside. The detenu viz., N.Senguttuvan, son of Late Nagarajan, Hindu, aged about 42 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Chief
Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Inspector General of Police
(Law and Order)
Thiruchirapali
Thiruchirapali District.
- 3.The Deputy Inspector General of Police
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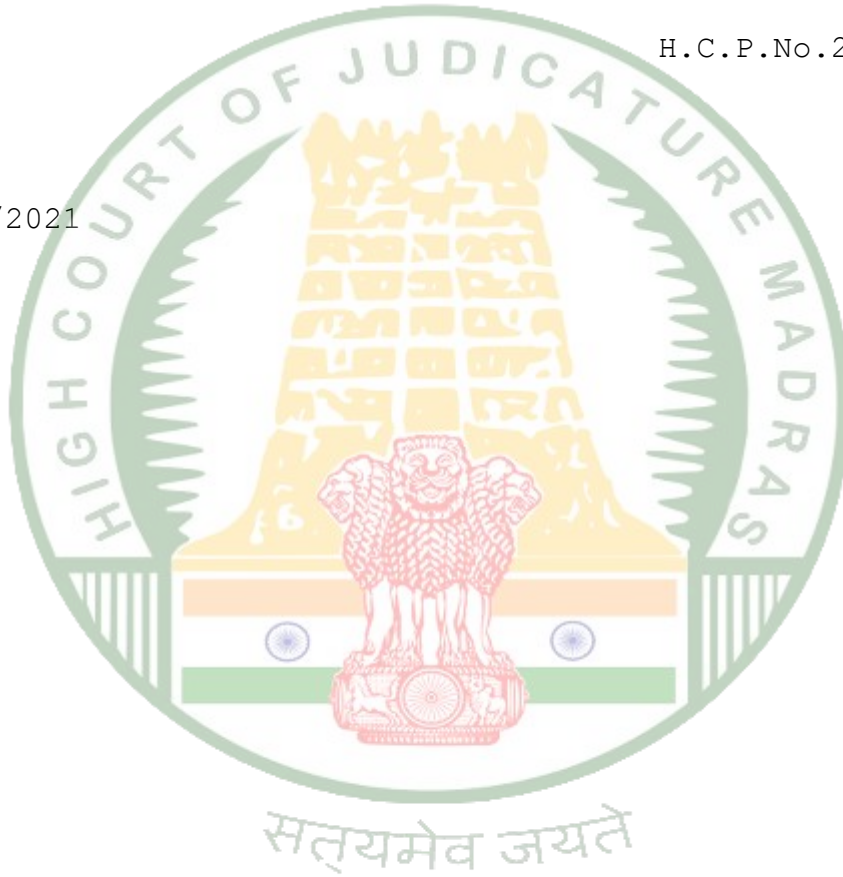
7.The Inspector of Police
(Law and Order)
Poraiyur Village & Post
Tharangambadi Taluk
Nagapattinam.

8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Dalit Tiger C.Ponnusamy, Advocate Sr.10231

H.C.P.No.2359 of 2020

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srg 22/02/2021



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