

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2429 of 2020

V.Ramani,

W/o.Varadharajan (Late)

... Petitioner /
Mother of the detenu

versus

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The District Collector cum
District Magistrate,
Kancheepuram District,
Kancheepuram.

3.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

4.The Additional Superintendent,
Central Prison-II,
Puzhal, Chennai.

5.The Inspector of Police,
Manimangalam Police Station,
Kancheepuram District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to produce the body of the petitioner's son namely Vignesh @ Appatha, S/o.Varadharajan, aged about 21 years, who is detained in 4th respondent / The Additional Superintendent, Central Prison-II, Puzhal, Chennai, before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated 04.10.2020 made in BCDFGISSSV No.57/2020 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.R.Muniyapparaj

Government Advocate (Crl. Side)

O R D E R

[Order of the Court was made by R.PONGIAPPAN, J.]

The petitioner is the mother of Vignesh @ Appatha, son of Varadharajan, aged about 21 years, who is the detenu. The detenu has been detained by the second respondent by its order dated 04.10.2020 in BCDFGISSSV No.57/2020, holding him to be a "Goonda", as contemplated under Section 2(f) of the 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 (Crl. Side) appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in this Petition, 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 (Crl. Side) has filed a counter and strongly opposed this 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 (Crl. 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 04.10.2020. The petitioner made a representation on 07.11.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.11.2020. The remarks were duly received on 04.12.2020. 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 23 days in submitting the remarks by the Detaining Authority, of which 6 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 04.12.2020 and there was a delay of 36 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 9

days were Government Holidays, hence, there was inordinate delay of 27 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 27 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 BCDFGISSSV No.57/2020 dated 04.10.2020, passed by the second respondent is set aside. The detenu, viz. Vignesh @ Appatha, son of Varadharajan, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

सत्यमेव जयते

Sd/-

Assistant Registrar (CO)

//True Copy//

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Sub Assistant Registrar

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To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The District Collector cum
District Magistrate,
Kancheepuram District,
Kancheepuram.

3.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

4.The Additional Superintendent,
Central Prison-II,
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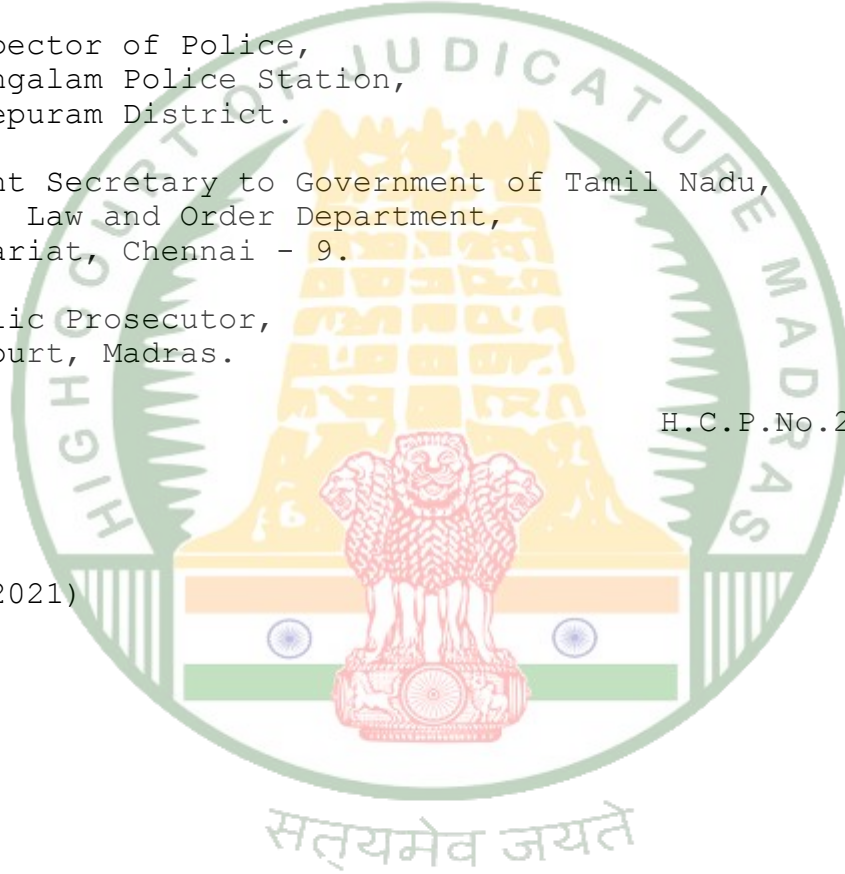
5.The Inspector of Police,
Manimangalam Police Station,
Kancheepuram District.

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.2429 of 2020

RK(CO)
GN(01/07/2021)



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