

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2425 of 2020

Rabiyathul Basheeriya,
W/o.Shahul Hameed

... Petitioner /
Wife of the detenu

versus

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

2.The Commissioner of Police,
Greater Chennai, Chennai District.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.State Rep. by:-
The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 19.11.2020 in No.463/BCDFGISSSV/2020 against the petitioner's husband Shahul Hameed, Male 24 years, son of Sheik Dawood, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.C.Paul Kanagaraj
For Respondents : Mr.J.C.Durairaj
Government Advocate (Crl. Side)

O R D E R

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

Since date has already been fixed in this case for disposal in Crl.M.P.No.5182 of 2021, this matter has been taken up today.

2. The petitioner is the wife of Shahul Hameed, son of Sheik Dawood, aged about 24 years, who is the detenu. The detenu has been detained by the second respondent by its order dated 19.11.2020 in No.463/BCDFGISSSV/2020, holding him to be a "Drug Offender", as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

3. 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.

4. 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.

5. The learned Government Advocate (Crl. Side) 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.

6. The Detention Order in question was passed on 19.11.2020. The petitioner made a representation on 03.12.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.12.2020. The remarks were duly received on 15.12.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 11.01.2021.

7. It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence, there was an inordinate delay of 4 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 15.12.2020 and there was a delay of 25 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 19 days in considering the representation.

8. 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.

9. 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.

10. 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 4 days in submitting the remarks by the Detaining Authority and unexplained delay of 19 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.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.463/BCDFGISSSV/2020 dated 19.11.2020, passed by the second respondent is set aside. The detenu, viz. Shahul Hameed, son of Sheik Dawood, 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

sri

To

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

2.The Commissioner of Police,
Greater Chennai, Chennai District.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.State Rep. by:-

The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai.

5.The Joint Secretary to Government of Tamil Nadu,
Public, Law and Order Department,
Secretariat, Chennai - 9.

6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2425 of 2020

rp (CO)
A.SK(17.06.2021)



WEB COPY