

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.2437 of 2020

Priyanka

... Petitioner

-vs-

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

2.The District Magistrate and District Collector,
Tiruvallur District, Tiruvallur.

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

4.The Superintendent of Police,
Tiruvallur District.

5.The Inspector of Police,
E-3, Minjur Police Station,
Tiruvallur 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 connection with the order of detention passed by the second respondent dated 17.10.2020 in B.C.D.F.G.I.S.S.S.V.No.45/2020 against the petitioner husband Mr.Rajasekar @ Ganasekar, Male, aged about 28 years, son of Vijayakumar, who is confined at Central Prison, Puzhal - II, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Illiyas

For Respondents : Mr.R.Muniyapparaj

Government Advocate (Crl. Side)

O R D E R
(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the wife of the detenu - Rajasekar @ Gana Sekar, son of Vijayakumar, Male, aged about 28 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.45/2020 dated 17.10.2020, 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. Learned counsel appearing for the petitioner further submitted that the detenu is now confined at Central Prison, Salem.

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 17.10.2020. The petitioner made a representation on 12.10.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.10.2020. The remarks were duly received on 07.11.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 17.11.2020.

6. It is the contention of the petitioner that there was a delay of 24 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holidays and hence there was an inordinate delay of 16 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 07.11.2020 and there was delay of

10 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 3 days were Government Holidays, hence, there was inordinate delay of 7 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 16 days in submitting the remarks and 7 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 B.C.D.F.G.I.S.S.S.V.No.45/2020 dated 17.10.2020, passed by the second respondent is set aside. The detenu, namely, Rajasekar @ Gana Sekar, Male, aged about 28 years, son of Vijayakumar, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

mmi/rna

To

- 1.The Secretary to Government,
Home, Prohibition Excise Department,
Fort St. George, Chennai 600 009.
- 2.The District Magistrate and District Collector,
Tiruvallur District, Tiruvallur.
- 3.The Superintendent,
Central Prison, Puzhal - II, Chennai.
- 4.The Superintendent, Central Prison, Salem.
- 5.The Superintendent of Police, Tiruvallur District.
- 6.The Inspector of Police,
E-3, Minjur Police Station, Tiruvallur District.
- 7.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
- 8.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2437 of 2020

rp (CO)
A.SK(17.06.2021)



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