

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice R.PONGIAPPAN

H.C.P.No.2528 of 2020

M.Sumithra

.. Petitioner

Vs.

- 1.State of Tamil Nadu represented by
The Secretary to Government (Home),
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Prison,
Central Prison,
Vellore.
- 4.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 5.The Inspector of Police,
Polur Prohibition Enforcement Wing,
Polur,
Tiruvannamalai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records of the 2nd respondent in proceedings D.O.No.132/2020-C2 dated 02.12.2020 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of petitioner's husband Mahendiran, son of Periyannan, aged about 29 years, branded as "Bootlegger" and now confined in Central Prison, Vellore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.N.Chinnaraj

For Respondents : Mr.R.Muniyapparaj
Govt. Advocate (Crl.Side)

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner is the wife of the detenu viz., Mahendiran, son of Periyannan, aged about 29 years. The detenu has been detained by the second respondent in D.O.No.132/2020-C2 dated 02.12.2020, holding him to be a "Bootlegger", as contemplated under Section 2(b) 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 (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 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 (Crl.Side) strongly opposed the Habeas Corpus Petition by filing his counter. 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 02.12.2020. The petitioner made a representation dated nil. Thereafter, remarks were called for by the Government from the Detaining Authority on 11.01.2021. The remarks were duly received on 08.02.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 15.04.2021.

6. It is the contention of the petitioner that there was a delay of 27 days in submitting the remarks by the Detaining Authority, of which 10 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 08.02.2021 and there was a delay of 63

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 20 days were Government Holidays, hence, there was inordinate delay of 43 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 43 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 D.O.No.132/2020-C2 dated 02.12.2020, passed by the second respondent is set aside. The detenu, viz., Mahendiran, son of Periyannan, aged about 29 years, 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

nsd

To

- 1.The Secretary to Government (Home),
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Prison,
Central Prison,
Vellore.
- 4.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 5.The Inspector of Police,
Polur Prohibition Enforcement Wing,
Polur,
Tiruvannamalai 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.2528 of 2020

GSM(CO)
GMY (30/06/2021)

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