

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.NO.134 OF 2022

S.Subakala

.. Petitioner

Vs

1. State of Tamil Nadu represented by  
The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 09.
2. The District Collector and District Magistrate,  
Thiruvarur District, Thiruvarur.
3. The Superintendent of Police,  
Thiruvarur District, Thiruvarur.
4. The Inspector of Police,  
Thiruthuraipoondi Police Station,  
Thiruvarur.
5. The Superintendent of Prison,  
Special Prison for Women,  
Tiruchirappalli.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the impugned detention order passed by the 2<sup>nd</sup> respondent made in his proceedings in detention C.O.C.No.32/2021 dated 27.12.2021 in detaining the detainee under section 2(b) of Tamil Nadu Act 14 of 1982 as a "Bootlegger" and quash the same and direct the respondents to produce the detainee viz., Anbu, W/o. Shivaji, aged about 54 years, who is detained in the Special Prison for Women, Thiruchirappalli, before this Court and set him at liberty.

For Petitioner : M/s.O.S.Thilak Pasumbadiyar

For Respondents : Mr.M.Babu Muthumeeran  
Addl. Public Prosecutor

ORDER

S.VAIDYANATHAN, J.  
and  
A.D.JAGADISH CHANDIRA, J.

The petitioner is the daughter of the detainee Anbu, W/o. Shivaji, aged about 54 years. The detainee has been detained by the second respondent by his order in C.O.C.No.32/2021 dated 27.12.2021, holding her 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 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 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 on behalf of the detainee was not considered in 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 detainee 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

27.12.2021. A representation was made on behalf of the detainee on 18.12.2021. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.01.2022. The remarks were duly received on 29.01.2022. Thereafter, the Government considered the matter and passed the order rejecting the representation on 18.04.2022.

6. It is the contention of the petitioner that there was a delay of 22 days in submitting the remarks by the Detaining Authority, of which, 10 days were Government Holidays and hence there was an inordinate delay of 12 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 29.01.2022 and there was a delay of 79 days in considering the representation by the Hon'ble Minister for Home, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 25 days were Government Holidays, hence, there was an inordinate delay of 54 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 detainee.

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 detainee 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 12 days in submitting the remarks by the Detaining Authority and unexplained delay of 54 days in considering the representation by the Hon'ble Minister for Home, 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.32/2021 dated 27.12.2021, passed by the second respondent is set aside. The detenue, viz., Anbu, W/o. Shivaji, aged about 54 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Additional Chief Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 09.
2. The District Collector and District Magistrate,  
Thiruvarur District, Thiruvarur.
3. The Superintendent of Police,  
Thiruvarur District, Thiruvarur.
4. The Inspector of Police,  
Thiruthuraipoondi Police Station,  
Thiruvarur.
5. The Superintendent of Prison,  
Special Prison for Women,  
Tiruchirappalli.
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.134 of 2022

SKM(CO)  
PM/14/07/2022