

(2015) 12 MAD CK 0037
In the Madras High Court
Case No : H.C.P.(MD) No. 1242 of 2015

Ilavarasi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 22
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 2(b), 3

Citation : (2015) 12 MAD CK 0037

Hon'ble Judges : P.R. Shivakumar and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : K.A.S. Prabhu, for the Appellant; A. Ramar, Additional Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.S. Ravi, J.—The petitioner is the wife of the detenu - Kavi alias Kaviarasan, son of Selvaraj, Male, aged about 39 years. He has been detained, as per the order of the second respondent, dated 11.08.2015, under Section 2(b) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), read with the order issued by the Government in G.O.(D). No. 147, Home Prohibition and Excise (XVI) Department, dated 18.07.2015, under Sub-Section (2) of Section 3 of the said Act, branding him as "Boot-legger". Challenging the same, the Petitioner has come up with this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the

ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon''ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as, on account of the said delay, 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 11.08.2015. As against the same, the petitioner made a representation dated 20.08.2015. The remarks were called for by the Government from the Detaining Authority on 24.08.2015. The remarks were received on 10.09.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 21.09.2015. It is the contention of the petitioner that there was delay of 13 days in submitting the remarks by the Detaining Authority and thereafter, there was delay of 5 days in considering the representation.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, , the Hon''ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon''ble Supreme Court has further 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 of the detenu.

9. In *Sumaiya v. 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 detention order.

10. In *Tara Chand Vs. State of Rajasthan and Others*, , the Hon''ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon''ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon''ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 18 working days and therefore, the impugned detention

order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 11.08.2015, made in Cr.M.P. No. 28/2015, passed by the second respondent and directs the release of the detenu, by name Kavi alias Kaviarasan, son of Selvaraj, Male, aged about 39 years, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.