



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.12.2015
CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1181 of 2015

Murugan .. Petitioner
Vs.

1.The District Collector /
District Magistrate,
Tirunelveli District, Tirunelveli.

2.The State rep. by the
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-600 009.

3.The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed in M.H.S.Confdl.No.89/2015, dated 27.07.2015 on the file of the first respondent, quash the same and consequently, direct the respondents to produce the body or person of the detenu by name Sudalaikannu S/o.Murugan, aged about 23 years, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by V.S.RAVI,J]

The petitioner is the father of the detenu. The detenu has been detained, as per the order of the first respondent under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". Challenging the same, he has come up with this 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 for the petitioner would submit that the second respondent has failed to consider the representation, dated 05.08.2015, sent by the petitioner for revocation of the order of detention and till date, no order came to be passed on the said representation either revoking the order of detention or acting on the representation. 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. In this case, the Detention Order has been passed on 27.07.2015. As against the same, the petitioner made a representation on 29.07.2015, as per the details mentioned at page 5 of the counter affidavit and also at page No.6, it has been categorically admitted by the first respondent that the representation filed on behalf of the petitioner has been received and remarks sent to the Government on 14.08.2015. However, the counter affidavit is very much silent about the follow up action taken regarding the said representation dated 29.07.2015. In the circumstances, it is seen that after the receipt of the remarks from the Sponsoring Authority, till 09.10.2015, namely, the date on which the counter affidavit has been filed, no order has been passed either revoking the order of detention or rejecting on the representation. Thus, as rightly contended by the learned counsel for the petitioner, there is an unexplained and inordinate delay in considering the said representation of the petitioner dated 29.07.2015.

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

7. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], 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 guarded 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.



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/detenu would be sufficient to set aside the detention order.

9. In Tara Chand Vs. State of Rajasthan and others, [1980 (2) SCC 321], 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.

10. 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 the above mentioned several working days in considering the representation of the petitioner dated 29.07.2015 and therefore, the impugned detention order is liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, dated 27.07.2015, made in M.H.S.Confdl.No.89/2015, by the first respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Sudalaikannu S/o.Murugan, aged about 23 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department, Fort St. George,
Chennai-600 009.
- 2.The District Collector / District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent, Central Prison, Palayamkottai, Tirunelveli
- 4.The Joint Secretary to Government,
Public(Law and Order) Fort Saint George, Chennai-9
- 5.The Inspector of Police, Thalaisyuthu Police Station,
Tirunelveli District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

gcg

<https://hccases.courtsgov.in/cases/> 12/12/2015

Order Made in
H.C.P(MD)No.1181 of 2015
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