



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2015

CORAM:

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

H.C.P (MD) No.1219 of 2015

Mounasundaram

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Karur District, Karur.

3.The Superintendent of Central Prison,
Central Prison, Tiruchirappalli. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in Cr.M.P.No.09/2015, dated 08.08.2015 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Maheskumar, Son of Mounasundaram, aged about 30 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

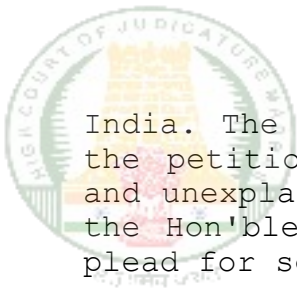
ORDER

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

The petitioner is the father of the detenu viz., Maheshkumar, Son of Mounasundaram, aged about 30 years. The detenu has been detained, as per the order of the second respondent, dated 08.08.2015 in Cr.M.P.No.09/2015 under Section 2(gg) of the Tamilnadu Act 14 of 1982, branding him as "Sand Offender".

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 representations made by the petitioner were 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.

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4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representations, 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 08.08.2015. As against the same, the petitioner made two representations. In the first representation, the remarks were called for by the Government from the Detaining Authority on 20.08.2015. The remarks were received on 31.08.2015. Thereafter, the Government considered the issue and passed the order rejecting representation on 04.09.2015. It is the contention of the petitioner that there was delay of seven days in submitting the remarks by the Detaining Authority and there was delay of two days on the part of the Government in considering the same.

7. Also, for the second representation, the remarks were called for by the Government from the Detaining Authority on 01.09.2015. The remarks were received on 07.09.2015. Thereafter, the Government considered the issue and passed the order rejecting representation on 15.09.2015. It is the contention of the petitioner that there was delay of four days in submitting the remarks by the Detaining Authority and there was delay of eight days on the part of the Government in considering the same.

8. Also, for the third representation, the remarks were called for by the Government from the Detaining Authority on 15.09.2015. The remarks were received on 28.09.2015. Thereafter, the Government considered the issue and passed the order rejecting representation on 16.09.2015. It is the contention of the petitioner that there was delay of seven days in submitting the remarks by the Detaining Authority and there was delay of nine days on the part of the Government in considering the same.

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

10. 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 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.

<https://hcservices.ecourts.gov.in/hcservices/> 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.

12. 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.

13. 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 nine working days with regard to the first representation and twelve working days with regard to the second representation and sixteen working days with regard to the third representation therefore, the impugned detention order is liable to be quashed.

14. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the second respondent, in his proceedings in Cr.M.P.No.09/2015, dated 08.08.2015, is quashed. The detenu, by name, Maheskumar, Son of Mounasundaram, aged about 30 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Secretary to Government,
Rep. By the State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
 - 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Karur District,
Karur.
 - 3.The Superintendent of Central Prison,
Central Prison,
Tiruchirappalli.(In duplicate to communicate to the detenu)
 - 4.The Joint Secretary to Government Public (Law and Order)Department,
Fort St.George, Chennai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1CC to Mr.K.A.S. Prabhu,Advocate, SR.No. 67917