



WEB COPY

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.1243 of 2015

S.Murugan

.. Petitioner

Vs.

1.The State of Tamil Nadu,  
Rep. By the Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George,  
Chennai - 600 009.

2.The Deputy Inspector General of Police,  
Tirunelveli Range and  
The Commissioner of Police,  
Tirunelveli City,  
(Full Additional Charge),  
Tirunelveli.

3.The Superintendent,  
Borstal School,  
Pudukottai,  
Pudukottai District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in No.65/BCDFGISSSV/2015, dated 28.07.2015 on the file of the second respondent herein and quash the same and direct the respondents to produce the person or body of the petitioner's son namely M.Palaniselvam @ Palani, Son of Murugan, aged about 19 years, now detained in Borstal School, Pudukottai, Pudukottai District before this Court and set him at liberty forthwith.

For Petitioner

: Mr.R.Johnsathyan

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., M.Palaniselvam @ Palani, Son of Murugan, aged about 19 years. The detenu has been detained, as per the order of the second respondent, in No.65/BCDFGISSSV/2015, dated 28.07.2015, under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". Challenging the same, he has come up with this Habeas Corpus Petition.

2. Though the learned counsel appearing for the petitioner has pointed out various grounds in the petition, he has straightaway drawn the attention of the Court to the long delay in considering the



representation made on behalf of the detenu.

3. In fact, as per the details endorsed at page No.19 of the typed-set of papers, the petitioner has sent a representation on 12.08.2015 on behalf of the detenu. In the counter-affidavit, it is specifically averred in paragraph No.(vii) at page No.6 and the same reads as follows:-

"...The representation dated 12.08.2015, sent by the petitioner was considered and the parawar remarks were sent to the Government in this office letter in C.2.No.1273/COP/IS/TIN-C/2015, dated 27.08.2015 as detailed below:-

1.Date of receipt of representation : 24.08.2015

2.Date of calling for remarks from the  
sponsoring authority : 24.08.2015

3.Date of receipt of remarks from the  
sponsoring authority : 27.08.2015

4.Date of forwarding remarks to  
Government : 27.08.2015

Holidays: Nil

The representation was rejected in Government letter No.18581/H, P & E(14)/2015, dated 04.09.2015."

4. Pursuant to the said representation, dated 12.08.2015, the remarks were called for by the Government from the Detaining Authority on 24.08.2015. The remarks were received on 27.08.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 04.09.2015. It is the contention of the petitioner that there was delay of five working days in considering the representation of the petitioner, dated 12.08.2015.

5. Now, the question is as to whether on the ground of delay alone, the impugned order can be quashed.

6. 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.

7. 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.

8. 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.



9. 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.

10. On a mere perusal of the said averments made in the counter-affidavit filed by the second respondent, it is crystal clear that there is a long delay for more than 5 working days in considering the representation filed on behalf of the detenu, challenging the detention order, and there is no acceptable reason furnished by the second respondent for the long delay in considering the representation made on behalf of the detenu and therefore, applying the dictum laid down by the Apex Court in the cases cited supra, the impugned detention order is liable to be quashed.

11. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 28.07.2015, made in No.65/BCDFGISSSV/2015, by the second respondent and directs the release of the detenu, by name M.Palaniselvam @ Palani, Son of Murugan, aged about 19 years, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai - 9.
- 2.The Deputy Inspector General of Police,  
Tirunelveli Range and The Commissioner of Police,  
Tirunelveli City, (Full Additional Charge),  
Tirunelveli.
- 3.The Superintendent,  
Borstal School,  
Pudukottai, Pudukottai District.
- 4.The Joint Secretary to Government Public (Law and Order) Department,  
Fort Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High court, Madurai.

+1cc to M/s.R.John Sathyan, Advocate SR.No.67714.

AA:GSV-PM:AR I:1.12.2015:3P/7C