



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.895 of 2015

Abu Backer

..Petitioner

Vs.

1. The Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

3. The Superintendent of Prison,
Borstal School cum District Jail,
Pudukottai District.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.2 in 23/BCDFGISSSV/2015, dated 11/03/2015 and quash the same and direct the respondents to produce the detenu by name Anwar Batcha, S/o.Abubakcer, aged about 19 years, now detained at Borstal School, Pudukottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.T.Mohan

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, namely Anwar Batcha. The detenu has been detained as per the order of the second respondent under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda".

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and 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 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. But, 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 11.03.2015. As against the same, the petitioner made a representation on 24.03.2015. The remarks were called for by the Government from the Detaining Authority on 30.03.2015. The remarks were received on 06.04.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 17.04.2015. It is the contention of the petitioner that there was delay of three days in submitting the remarks by the Detaining Authority and there was delay of five days on the part of the Government in considering the same.

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

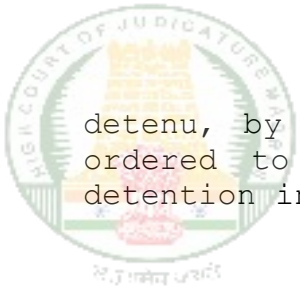
8. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the procedural safeguards are required to be zealously 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.

9. 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.

10. 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.

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 eight working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the second respondent in his proceedings in No.23/BCDFGISSSV/2015, dated 11.03.2015, is quashed. The



detenu, by name, Anwar Batcha, S/o.Abubakcer, aged about 19 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(Records)

/True copy/

WEB COPY

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Secretariat, Chennai-9.
3. The Director General of Police,
Chennai-4.
4. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
5. The Superintendent of Prison,
Borstal School cum District Jail,
Pudukottai District.
(in duplicate to communicate the detenu)
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.R.Alagumani, Advocate in SR.No.59940

H.C.P (MD) No.895 of 2015
08.10.2015

pjl

PBK/NGM-SS/SAR-I 09/10/2015 ::3P-9C::