



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1349 of 2015

Myilammal

..Petitioner/Mother of Detenue

Vs.

The State of Tamil Nadu rep. by

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai 600 009.

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

..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 relating to the detention order of the respondent No.2 in proceedings No.104/BCDFGISSSV/2015, dated 13.08.2015 in detaining the detenue under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the body or person of the detenu by name Sathishkumar S/o.Sundara Mahalingam, aged about 30 years, who is detained in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.V.Maharajan

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 mother of the detenu viz., Sathishkumar S/o.Sundara Mahalingam. The detenu has been detained, as per the order of the second respondent, dated 13.08.2015, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, she 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 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.

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 13.08.2015. As against the same, the petitioner made two representations dated 25.08.2015 and 14.08.2015. The remarks were called for by the Government from the Detaining Authority on 31.08.2015 and 27.08.2015 respectively. The remarks were received on 31.08.2015 and 04.09.2015 respectively. It is the contention of the learned counsel for the petitioner that there was no delay with regard to the first representation, but there was delay of six working days with regard to the second representation in submitting the remarks by the Detaining Authority. Thereafter, the Government considered the issue and passed the order rejecting the representations on 14.09.2015 and 15.10.2015 respectively. Hence, there was a delay of 7 working days with regard to the first representation and 6 working days with regard to the second respondent on the part of the Government in considering the same.

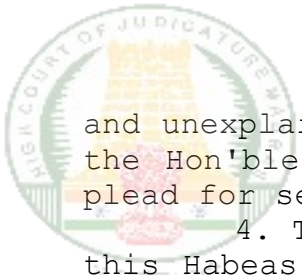
7. Now, the question is as to whether on that score, the impugned order can be quashed.

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 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 totally 7 working days with regard to the first representation and 12 working days with regard to the



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second representation 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 13.08.2015, made in No.104/BCDFGISSSV/2015, passed by the second respondent / the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu, by name Sathishkumar S/o.Sundaramahalingam, aged about 30 years, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police,
Madurai City, Madurai.
3. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.
4. The Superintendent of Central Prison,
Palayamkottai
(in duplicate for communicate to detenue)
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.V.Maharasan, Advocate in SR.1456

H.C.P (MD)No.1349 of 2015

Dated: 07.01.2016

gcg

PBK/GSV-AN/SAR-II 11/01/2016 ::3P-8C::