



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.01.2016**

CORAM:

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

H.C.P (MD) No.1370 of 2015

Velmurugan

.. Petitioner

Vs.

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,
Office of the Commissioner of Police,
Tirunelveli City,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli 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 relating to the detention order of the respondent No.2 in Detention Order No.38/BCDFGISSSV/2015, dated 17.04.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Velmurugan S/o.Shanmugam Asari, aged about 35 years, now detained at Palayamkottai Central Prison, before this Court and set him at liberty.

For Petitioner

: Mr.R.Alagumani

For Respondents

: Mr.A.Ramar

Additional Public Prosecutor

ORDER

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

The detenu is the petitioner. He has been detained, as per the order of the second respondent, dated 17.04.2015, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, he has come up with this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the 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 17.04.2015. As against the same, the petitioner made three representations dated 27.04.2015, nil and 01.09.2015. The remarks were called for by the Government from the Detaining Authority on 04.05.2015, 25.06.2015 and 01.09.2015 respectively. The remarks were received on 08.05.2015, 17.07.2015 and 22.09.2015 respectively. It is the contention of the petitioner that there was delay of 4 working days with regard to the first representation, 16 working days with regard to the second representation and 12 working days with regard to the third representation in submitting the remarks by the Detaining Authority. Thereafter, the Government considered the issue and passed the order rejecting the representations on 14.05.2015, 27.07.2015 and 25.09.2015. Hence, there was delay of 2 working days with regard to the first representation, 6 working days with regard to the second representation and 2 working days with regard to the third representation 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) MNW (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 the above mentioned working days 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 17.04.2015, made in No.38/BCDFGISSSV/2015, passed by the second respondent / the Commissioner of Police, Tirunelveli City, Tirunelveli and directs the release of the detenu, by name S.Velmurugan S/o.Shanmugam, aged about 35 years, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

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,
Office of the Commissioner of Police, Tirunelveli City, Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison, Tirunelveli District.
(In Duplicate to communicate the detenu)
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Director General of Police, Mylapore, Chennai -4.
- 6.The Joint Secretary to Government,
Public (Law and Order), Fort St.George, Chennai -9.

+1cc to Mr.R.Alagumani, Advocate Sr.No.518

akm/05.01.2016/3p-9c/GSV/AN/SAR-I