



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1409 of 2015

Gowri

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep by its Secretary to Government,
Government of Tamil Nadu, Home
Prohibition & Excise Department,
Chennai-9

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 records pertaining to the proceedings of the 2nd respondent made in his proceedings Detention order No.102/BCDFGISSSV/2015 dated 07.08.2015 and quash the same and set petitioner's son by name Kamal @ Mari Lakshmanan S/o.Poomariappan, aged about 25 years at liberty from Central Prison, Madurai.

For Petitioner : Mr.M.Karunanithi

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., Kamal @ Mari Lakshmanan S/o.Poomariappan. 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. 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 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 07.08.2015. 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 21.09.2015. The remarks were received on 22.09.2015. Thereafter, the Government considered the issue and passed the order rejecting representation on 08.10.2015. It is the contention of the petitioner that there was delay of six 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 23.09.2015. The remarks were received on the same date itself. Thereafter, the Government considered the issue and passed the order rejecting representation on 08.10.2015. It is the contention of the petitioner that there was delay of six days on the part of the Government in considering the same.

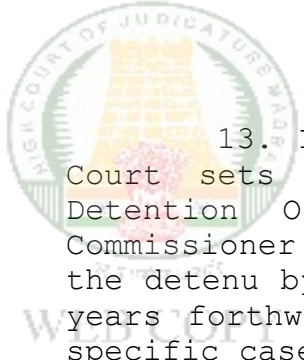
8. Now, the question is as to whether on that score, the impugned order can be quashed.

9. 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.

10. 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.

11. 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.

12. 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 unexplained delay of six working days with regard to the first representation and six working days with regard to the second representation and therefore, the impugned detention order is liable to be quashed.



13. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, dated 07.08.2015, made in Detention Order No.102/BCDFGISSSV/2015, by the second respondent / Commissioner of Police, Madurai City, Madurai and directs the release of the detenu by name Kamal @ Mari Lakshmanan S/o.Poomariappan, aged about 25 years forthwith, if his continued custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Secretary to Government,
Government of Tamil Nadu, Home
Prohibition & Excise Department,
Chennai 9
- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3 The Superintendent of Prison, Central Prison, Madurai
(in duplicate to communicate the detenu)
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+lcc to M/S.M.Karunanithi, Advocate in SR.No. 2269

TS/29.01.2016/3P-7C/GSV-AN/SAR I

Order Made in
H.C.P (MD) No.1409 of 2015

11.01.2016