



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.1497 of 2015

Amuthu

.. Petitioner

Vs.

1.The State rep by

The District Magistrate cum District Collector,
Thanjavur, Thanjavur District.

2.The Secretary,

The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.Gt.George, Chennai 600 009.

.. 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 relating to the detention order passed by the first respondent in detention order P.D.No.58 of 2015, dated 29.09.2015 and quash the same and direct the respondents to produce the body or person of Pitchai @ Anthony Pitchai, S/o.Amuthu, aged 29 years, now detained at Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr.A.Arun Prasad

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 father of the detenu. He has been detained, as per the order of the first respondent, dated 29.09.2015, 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 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 29.09.2015. As against the same, the petitioner made two representations dated 12.10.2015 and 02.10.2015 respectively. The remarks were called for by the Government from the Detaining Authority on 20.10.2015. The remarks were received on 28.10.2015. It is the contention of the petitioner that there was delay of four working days with regard to the first representation in submitting the remarks by the Detaining Authority. Thereafter, the Government considered the issue and passed the order rejecting the representations on 07.11.2015. Hence, there was delay of six working days with regard to the said representations 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 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 29.09.2015, made in P.D.No.58 of 2015, passed by the first respondent/the District Magistrate cum District Collector, Thanjavur, Thanjavur District and directs the release of the detenu, by name Pitchai @ Anthony Pitchai, S/o.Amuthu, aged 29 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
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The District Magistrate cum District Collector,
Thanjavur, Thanjavur District.
- 2.The Secretary,
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.Gt.George, Chennai 600 009.
- 3 The Superintendent of Prison, Central Prison, Trichy
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+lcc to Mr.A.Arun Prasad, Advocate SR.No.2412

TS/19.01.2016/3P-5C/ GSV-AN/SAR II

H.C.P (MD)No.1497 of 2015

Dated: 11.01.2016