



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P(MD)No.497 of 2016

Vijayakumar : Petitioner
Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District.
- 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, connected with the detention order of the second respondent in M.H.S.Confdl.No.46/2016, dated 10.04.2016 and quash the same and direct the respondents to produce the detenu, namely, Kumar, S/o.Asirvahtam, aged about 37 years detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.Dhanasekaran
For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

This Habeas Corpus Petition is filed by the brother of the detenu - Kumar, who is under detention, pursuant to the order passed by the second respondent dated 10.04.2016, in M.H.S.Confdl.No.46/2016, under Section 2(gg) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), read with the order issued by the Government in G.O.(D).No.15, Home



Prohibition and Excise (XVI) Department, dated 18.01.2016, under Sub-Section (2) of Section 3 of the said Act, branding him as "**Sand Offender**".

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 produced by the Detaining Authority.

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 gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, 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. The Detention Order in question was passed on 10.04.2016. The petitioner made a representation dated 16.04.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.04.2016. The remarks were duly received on 02.05.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 17.05.2016.

6. It is the contention of the petitioner that there was a delay of eight days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of ten days in considering the representation.

7. In ***Rekha Vs. State of Tamil Nadu***, [2011 (5) SCC 244], the Hon'ble Supreme Court has 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 undertaken by the detenu.

8. 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 order of detention.

9. 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 very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of eight days in submitting the remarks by the Detaining Authority and ten days in considering the representation. The impugned detention order is, therefore, liable to be quashed.



11. In the result, the Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl.No.46/2016, dated 10.04.2016, is quashed. The detenu, namely, Kumar, S/o.Asirvahtam, aged about 37 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamilnadu
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government
Public (Law and order) Department
Secretariat, Chennai - 9.

JA-DB-29.7.2016/3P/6C

ORDER MADE IN
H.C.P(MD)No.497 of 2016
Dated: 21.07.2016