

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM:

THE HONOURABLE MR. **JUSTICE RAJIV SHAKDHER**

and

THE HONOURABLE MR. **JUSTICE N.SATHISH KUMAR**

H.C.P.No.1012 of 2017

Jesi

... Petitioner

-VS-

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

2.The District Collector &
district Magistrate,
Vellore District,
Vellore 9.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of Detention passed by the second respondent dated 11.06.2017 in C3.D.O.No.54/2017 against the petitioner's husband Mugunthan, male aged 56 years s/o Perumal, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detainee before this Court and set him at liberty.

For Petitioner : Mr.D. Balaji
For Respondents : Mr. V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.SATHISH KUMAR, J.**]

The petitioner is the wife of the detenu, namely, Thiru. Mugunthan, Male, aged 56 years. The detenu has been detained by the 2nd respondent by his order in C3.D.O.No.54/2017 dated 11.06.2017, holding him to be a "Bootlegger", as contemplated under 2(b) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing 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 appearing 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 in time and there was an inordinate and unexplained delay with regard to the same.

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 11.06.2017. The petitioner made representations, on 13.07.2017 and nil date and the same were received on 17.07.2017 and 08.08.2017 respectively. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.07.2017 and 08.08.2017. The remarks were duly received on 03.08.2017 and 23.08.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 16.08.2017 and 11.09.2017 respectively.

6.It is the contention of the petitioner that there was a delay of 16 days and 15 days in submitting the remarks by the Detaining Authority, of which 4 days and 7 days were Government Holidays and hence there was

a delay of 12 days and 8 days respectively, in submitting the remarks. Thereafter, there was another delay of 10 days and 15 days for considering the representations, of which 4 days and 7 days were Government Holidays, hence, there was delay of 6 days and 8 days in considering the representations respectively.

7. In ***Rekha vs. State of Tamil Nadu***, reported in **2011 (5) SCC 244**, the Honourable 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***, reported in **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 Anbazhagansthan and others***, reported in **1980 (2) SCC 321**, the Honourable 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 a delay of 16 days and 15 days respectively in submitting the remarks by the Detaining Authority and 6 days and 8 days delay in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3.D.O.No.54/2017, dated 11.06.2017, passed by the 2nd respondent is set aside. The detenu, namely, Thiru. Mugunthan, male aged 56 years Son of Perumal, is directed to be released forthwith unless his detention is required in connection with any other case. Given the nature of the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

[R.S.A.,J.] [N.S.K.,J.]

03.11.2017

Index : Yes / No
Internet : Yes / No
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Note to office:

1. Issue order copy by today itself.
2. Order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

To:

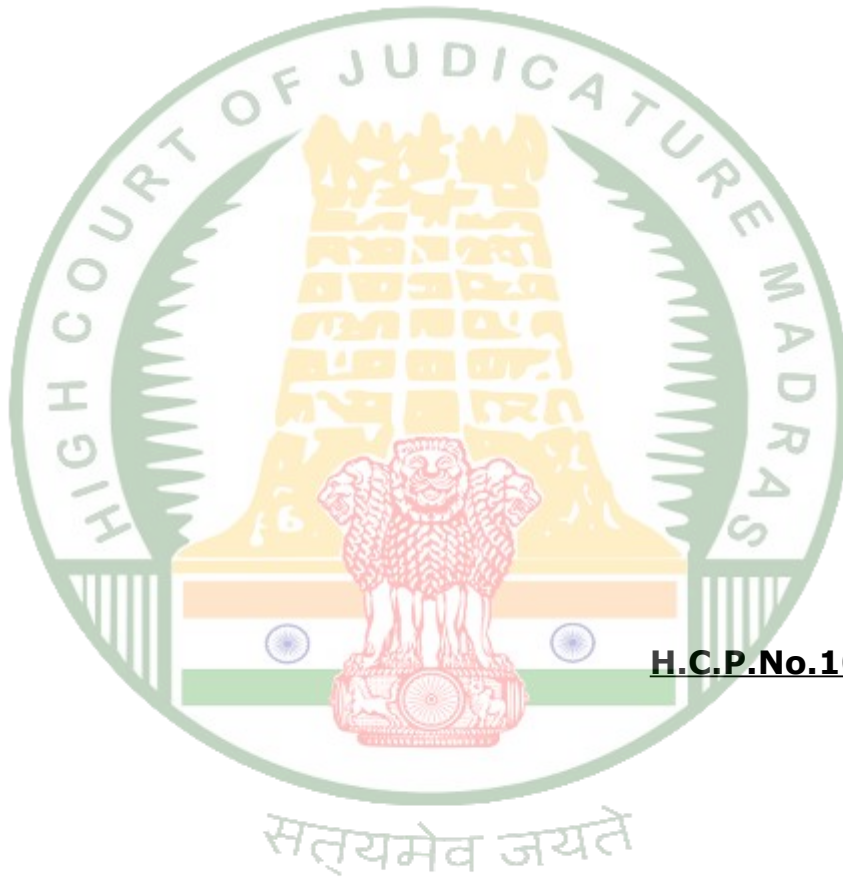
- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
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- 2.The District Collector &
district Magistrate,
Vellore District,
Vellore 9.
- 3.The Joint Secretary to Government,
Public, Law and Order Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.
4. The Superintendent, Central Prison,
Vellore.
- 5.The Public Prosecutor,
Madras High Court, Madras.



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RAJIV SHAKDHER, J.
and
N.SATHISH KUMAR, J.

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