IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1024 of 2017

Gomathi ... Petitioner

Vs.

1.The Commissioner of Police,
Commissioner Office-Greater Chennai,
Vepery, Chennai 600 007.

2.The Secretary to Government of Tamil Nadu,
Prohibition and Excise Department, (Home)
Secretariat, Fort St. George,
Chennai-600 009. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the 1st respondent in connection with the order of 1st respondent dated 20.05.2017 Memo No.285/BCDFGISSSV/2017 detaining Vikki @ Vignesh son of Gandhi aged about 24 years as a Goonda under Tamil Nadu Act 14 of 82 and set aside the same and direct the respondent to produce the body of the said detenu, the detenu now lodged in Central Prison Puzhal, Chennai before this Hon'ble Court.

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For Petitioner : Mr.P.Prince Premkumar

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

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O R D E R

(Order of the Court was made by **N.SATHISH KUMAR, J)**

The petitioner is the mother of the detenu, namely, Vikki @ Vignesh, son of Gandhi male, aged about 24 years. The detenu has been detained by the 1st respondent by his order in Memo No.285/BCDFGISSSV/2017 dated 20.05.2017, holding him to be a "Goonda", as contemplated under 2(f) 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 representations made by the petitioner was not considered on time and there was an inordinate and unexplained delay with regard to the same.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus

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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 20.05.2017. The petitioner made representations, dated 13.06.2017 & 19.06.2017 and the same were received on 15.06.2017 & 22.06.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.06.2017 in respect of the first representation. Insofar as the second representation is concerned, remarks were called for on 22.06.2017. The remarks were duly received on 21.06.2017 in respect of the first representation. Insofar as the second representation, remarks were duly received on 27.06.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 22.06.2017 & 03.07.2017.

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6. It is the contention of the petitioner that in respect of the first representation there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence

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there was an inordinate delay of 4 days in submitting the remarks. Insofar as the second representation is concerned there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays and hence there was an inordinate delay of 2 days in submitting the remarks.

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 Rajasthan 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 an inordinate and

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unexplained delay of 4 days in submitting the remarks by the Detaining Authority in respect of the first representation. Insofar as the second representation is concerned, there is an inordinate and unexplained delay of 2 days in submitting the remarks by the Detaining Authority. 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 Memo No.285/BCDFGISSSV/2017 dated 20.05.2017, passed by the first respondent is set aside. The detenu, namely, Vikki @ Vignesh, Son of Gandhi, male, aged about 24 years, 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.)
23.10.2017

Index : yes/no

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Note: Issue order copy today

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RAJIV SHAKDER, J.
and

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N.SATHISH KUMAR, J.

vsm

To

1.The Commissioner of Police,
Commissioner Office-Greater Chennai,
Vepery, Chennai 600 007.

2.The Secretary to Government of Tamil Nadu,
Prohibition and Excise Department, (Home)
Secretariat, Fort St. George,
Chennai-600 009.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
Madras High Court,
Chennai.

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