

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.1026 of 2017

M.Mohan

... 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 first respondent in connection with the order of the first respondent dated 20.05.2017 Memo No.288/BCDFGISSSV/2017 detaining Ganapathy @ Saravanan Son of Mohan aged about 24 years as a Goonda under Tamil Nadu Act 14 of 82 and set aside the same and direct the respondents to produce the body of the said detenu now lodged in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.P.Prince Premkumar

For Respondents: Mr.V.M.R. Rajendran
Additional Public Prosecutor

O R D E R

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

The petitioner is the father of detenu, namely, Ganapathy @ Saravanan, Son of Mohan aged about 24 years. The detenu has been detained at Central Prison, Puzhal, as per the Order of the first respondent in 288/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 representation 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 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 and 19.06.2017 and the same were received on 15.06.2017 and 21.06.2017 respectively. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.06.2017 and 22.06.2017 respectively. The remarks were duly received on 21.06.2017 and 27.06.2017 respectively.. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 24.06.2017 and 29.06.2017 respectively.

6. It is the contention of the petitioner that there was a delay of 5 days and 4 days respectively in submitting the remarks by the Detaining Authority, of which 2 days and 3 days were Government Holidays and hence there was a delay of 2 days and one day in submitting the respective remarks. Thereafter, there was another delay of 2 days in considering the first representation.

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 a unexplained delay of 2 days in submitting the remarks by the Detaining Authority and 2 days 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 order No.288/BCDFGISSSV/2017 dated 20.05.2017, passed by the first respondent is set aside. The detenu, namely, Ganapathy @ Saravanan Son of Mohan 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ggs/mra

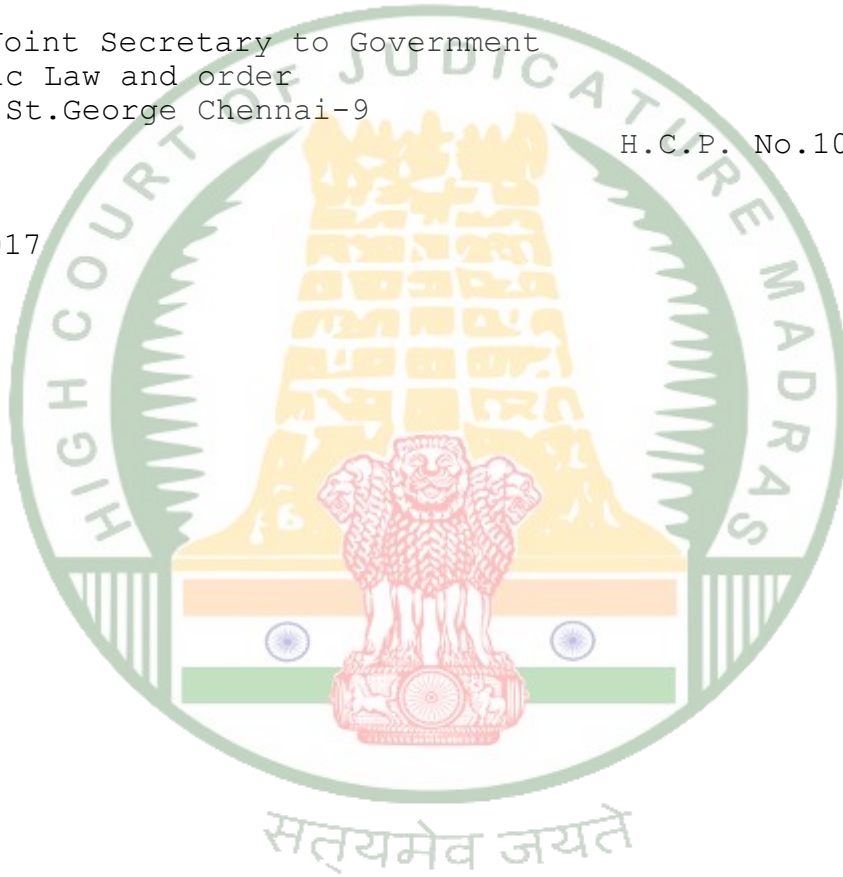
To:

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

2. The Commissioner of Police
Chennai City Police
Greater Chennai
Commissioner Office
Vepery, Chennai - 600 007.
3. The Superintendent,
Central Prison, Puzhal.
5. The Additional Public Prosecutor,
Madras High Court, Madras.
6. The Joint Secretary to Government
Public Law and order
Fort St.George Chennai-9

H.C.P. No.1026 of 2017

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