

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR
H.C.P.No.1041 of 2017

J.Reeta
W/o.Joseph Selvam

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai - 600 007.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the detainee Mervin @ Lasaer Mervin Vijay, M/31 now lodged at the Central Prison-II, Puzhal before this Hon'ble Court and call for the records of the 2nd respondent in bearing No.243/BCDFGISSSV/2017 dated 09.05.2017 and set aside the same and set the detenu Mervin @ Lasaer Mervin Vijay, M/31 at liberty.

For Petitioner : Mr.R.Muthukumar

For Respondents : Mr.V.M.R.Rajentran,

Addl. Public Prosecutor.

ORDER

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

The petitioner is the mother of the detenu, namely, Mervin @ Lasaer Mervin Vijay, S/o. Joseph Selvam, male, aged about 31 years. The detenu has been detained by the second respondent by his order in No.243/BCDFGISSSV/2017 dated 09.05.2017, 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 09.05.2017. The petitioner made three representations, dated 01.06.2017 and 03.07.2017 respectively and the same were received on 05.06.2017, 15.06.2017 and 05.07.2017 respectively. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.06.2017, 15.06.2017 and 05.07.2017 respectively. The remarks were duly received on 09.06.2017, 20.06.2017 and 10.07.2017 respectively. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 21.06.2017, 22.06.2017 and 13.07.2017 respectively.

6. It is the contention of the petitioner that in respect of the first representation there was a delay of 4 days in submitting the remarks by the

Detaining Authority. In respect of the second representation, there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 3 days in submitting the remarks and in respect of the third representation is concerned, there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 3 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 unexplained delay of 4 days, 3 days and 3 days respectively 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 No.243/BCDFGISSSV/2017 dated 09.05.2017, passed by the second respondent is set aside. The detenu, namely, Mervin @ Lasaer Mervin Vijay, S/o. Joseph Selvam, male, aged about 31 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.)

04.10.2017

Index : yes/no

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Note: Issue order copy today

RAJIV SHAKDER, J.

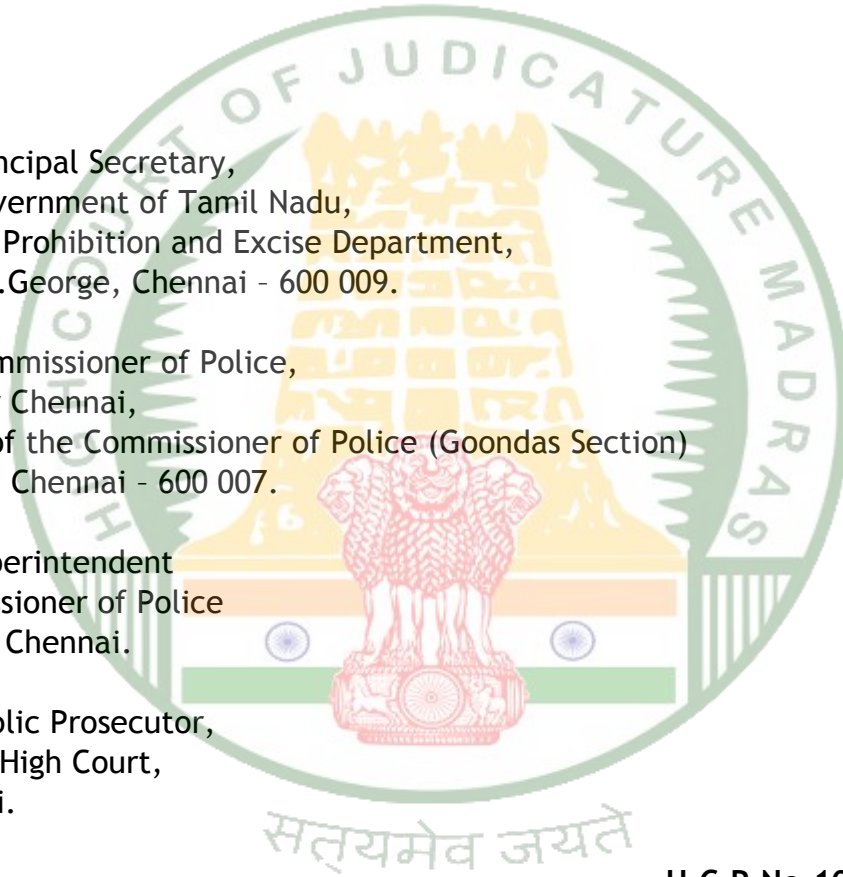
and

N.SATHISH KUMAR, J.

vsm

To

- 1.The Principal Secretary,
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai - 600 007.
- 3.The Superintendent
Commissioner of Police
Puzhal, Chennai.
- 3.The Public Prosecutor,
Madras High Court,
Chennai.



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