

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM:

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

H.C.P.No.1313 of 2017

Kannammal

... Petitioner

-VS-

1.State rep. by
Secretary to Government
Home Department,
Prohibition and Excise Wing,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Chennai Police,
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, to call for the records in connection with the order of detention passed by the 2nd respondent dated 29.04.2017 in Memo No.218/BCDFGISSSV/2017 against the petitioner's son namely Arumugham

S/o.Govindasamy aged about 32 years and he is presently confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondent to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.N.Selvarajan

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 mother of the detenu, namely, Arumugam, male, aged about 32 years. The detenu has been detained by the second respondent by his order in No.218/BCDFGISSSV/2017, dated 29.04.2017, holding him to be a "Goonda", as contemplated under 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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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 were 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 representations, 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 29.04.2017. The petitioner made a representation, dated 25.05.2017 and the same was received on 07.06.2017 and thereafter, made another representation, dated 07.06.2017 and the same was received on 06.06.2017. Thereafter,

remarks were called for by the Government from the Detaining Authority on 07.06.2017 in respect of the first representation and on 09.06.2017 in respect of the second representation. The remarks were duly received on 16.06.2017 in respect of both the representations. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 22.06.2017.

6. It is the contention of the petitioner that in respect of the first representation there was a delay of 9 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 7 days in submitting the remarks. Insofar as the second representation is concerned, there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 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 7 days in respect of the first representation and 5 days in respect of the second representation 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.218/BCDFGISSSV/2017, dated 29.04.2017, passed by the second respondent is set aside. The detenu, namely, Arumugam, son of Govindasamy, aged about 32 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
Internet : Yes / No
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Note to office:

Issue copy by today itself

To:

- 1.The Secretary to Government
Home Department,
Prohibition and Excise Wing,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
Chennai Police,
Office of the Commissioner
of Police,
(Goondas Section),
Vepery,
Chennai – 600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai
- 4.The Additional Public Prosecutor,
Madras High Court,
Madras.

RAJIV SHAKDHER, J.

And

N.SATHISH KUMAR, J.

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