

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2017

Coram:

The Honourable Mr. Justice Rajiv Shakdher
and
The Honourable Mr. Justice N. Sathish Kumar

H.C.P.No.1355 of 2017

Mrs. S. Padmavathy
W/o. Selvaraj

...Petitioner/Mother of the Detenue
Versus

1. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai.

...Respondents

Prayer :

This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the records in connection with the order of Detention passed by the second respondent dated 13.07.2017 in Memo No. 420/BCDFGISSSV/2017 against the petitioner son Gunganraj @ Sheik, Male aged 22 years S/o. Selvaraj who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr. S. Senthilvel
For Respondents : Mr. V.M.R. Rajentran,
Additional Public Prosecutor

ORDER

(Order of the Court was delivered by N. Sathish Kumar, J.,)

The petitioner is the mother of the detenue, namely, Thiru.Gunganraj @ Sheik, S/o. Selvaraj, Male, aged 22 years. The detenu has been detained by the second respondent by his order in No.420/BCDFGISSSV/2017, dated 13.07.2017, holding him to be a "Goonda", as contemplated under Section 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 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 13.07.2017. The petitioner made representations, on 22.07.2017 and 25.07.2017 and the same were received on 25.07.2017 and 27.07.2017 respectively. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.07.2017 and 27.07.2017. The remarks were duly received on 01.08.2017 in both representations. Thereafter, the Government considered the matter and passed the order rejecting both the representations on 23.08.2017.

6. It is the contention of the petitioner that there was a delay of 7 days and 20 days in submitting the remarks by the Detaining Authority, of which 2 days and 8 days were Government Holidays and hence there was a delay of 5 days, and 12 days respectively, in submitting the remarks. Thereafter, there was another delay of 5 days and 20 days in considering the representations, of which 2 days and 8 days were Government Holidays, hence, there was delay of 3 days and 12 days in considering the representations.

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 5 days and 12 days respectively in submitting the remarks by the Detaining Authority and 3 days and 12 days in considering the representations. 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.420/BCDFGISSSV/2017, dated 13.07.2017, passed by the second respondent is set aside. The detenu, namely, Thiru.Guganraj @ Sheik, S/o. Selvaraj, Male, aged 22 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

/TRUE COPY/

Sub Assistant Registrar

ggs/mrr

To

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

2. The Commissioner of Police,
Greater Chennai.

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,
Puzhal - II,
Chennai.

5. The Public Prosecutor,
Madras High Court,
Madras.

H.C.P.No.1355 of 2017

T.R (15/11/2017)



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