IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM:

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

H.C.P.No.1471 of 2017

Manoj ... Petitioner/Brother of detenue

-vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600009.

2. The Commissioner of Police/Detaining Authority,
City Police Officer,
Hazur Road, Coimbatore City,
Coimbatore-18. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records, relating to petitioner's brother deteion under Tamil Nadu Act 14 of 1982 vide detention Order dated 27.07.2017 on the file of the second respondent herein made in proceedings Memo C.No.54/G/IS/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely M.Sumesh S/o Muruali aged 20 years before this Court and set the petitioner's brother at liberty from detention.

For Petitioner : Mr.W. Camyles Gandhi

For Respondents: Mr. V.M.R.Rajentran
Additional 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 brother of the detenue, namely, Thiru. M.Sumesh S/0 Murali, aged 20 years. The detenu has been detained by the 2nd respondent by his order in C.No.54/G/IS/2017 dated 27.07.2017, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

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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 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, and the Central Government Standing Counsel, 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 27.07.2017. The petitioner made two representations, on 04.08.2017 and the same were received on 07.08.2017 and 05.09.2017.. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.08.2017 and 06.09.2017. The remarks were duly received on 16.08.2017 and 12.09.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 11.09.2017 and 03.10.2017.

6.It is the contention of the petitioner that there was a delay of 08 days and 05 dyas in submitting the remarks by the Detaining Authority, of which 4 days and 2 days were Government Holidays and hence there was a delay of 4 days and 3 days, in submitting the remarks. Thereafter, there was another delay of 20 days and 14 days for considering the representation, of which 07 days and 04 days were Government Holidays, hence, there was delay of 13 days and 10 days in considering the 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

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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 4 days and 3 days in submitting the remarks by the Detaining Authority and 13 days and 10 days delay 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 C.No.54/G/IS/2017 dated 27.07.2017, passed by the 2nd respondent is set aside. The detenu, namely, Thiru. M. Sumesh, male aged 20 years Son of Mr.Murali, 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

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To:

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600009.

2. The Commissioner of Police/Detaining Authority,
City Police Officer,
Hazur Road, Coimbatore City,
Coimbatore-18.

3. Additional Secretary to Government of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
(Department of Consumer Affairs),
Room No.270, Krishi bhavan,
New Delhi 110001.

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4. The Superintendent, Central Prison,
Coimbatore.

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

6.The Joint Secretary to Government,
Public Law and Order Department,
Government of Tamil Nadu,
Secretariat, Chennai-9

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GN(24/11/2017)

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