

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1538 of 2017

M.Karishma

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government
Home, Prohibition & Excise Department,
Fort. St.George, Chennai -9

2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai - 600 007

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order dated 01.8.2017 made in detention order in No.467/BCDFGISSSV/2017 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body of Thiru. Mukund Chand Bothra, son of Srichand, aged 57 years who has been detained in Sub Jail, Poonamallee before this Court and set at liberty.

For Petitioner : Mr.Parthiban for V.Perarasu

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

O R D E R

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

The petitioner is the daughter of the detenu, namely, Mukund Chand Bothra, S/o.Srichand, male, aged about 57 years. The detenu has been detained by the second respondent by his order in 467/BCDFGISSSV/2017, dated 01.8.2017, 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. 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 has filed a counter affidavit, in Court, today, along with medical report. 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 01.08.2017. The petitioner made representation dated 09.08.2017 and the same was received on 16.08.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 16.08.2017. The remarks were duly received on 23.08.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 11.09.2017.

6. It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 4 days in submitting the remarks. Thereafter, there was another delay of 18 days in considering the representation, of which 7 days were Government Holidays, hence, there was another inordinate delay of 11 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 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 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 Memo No.467/BCDFGISSSV/2017 dated 01.08.2017, passed by the second respondent is set aside. The detenu, namely, Mukund Chand Bothra, Son of Srichand, male, aged about 57 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 II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ga/ggs

To

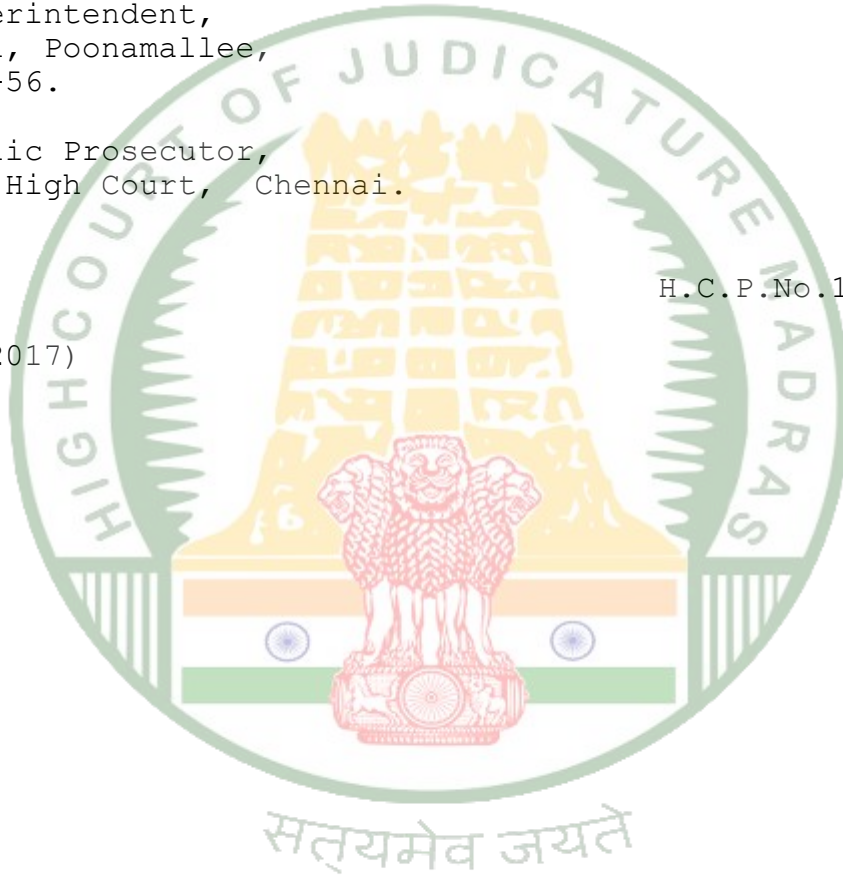
1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort. St.George, Chennai -9

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- 2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai - 600 007
3. The Joint Secretary to Government,
Public, Law and Order
Secretariat, Fort St.George, Chennai
- 4.The Superintendent,
Central Prison. Puzhal, Chennai
- 5.The Superintendent,
Sub Jail, Poonamallee,
chennai-56.
- 6.The Public Prosecutor,
Madras High Court, Chennai.

H.C.P.No.1538 of 2017

GN(01/11/2017)



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