

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1860 of 2017

Vijaya ... Petitioner / mother of
Detenue
-Vs-

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

2.The District Collector, and
District Magistrate,
Kancheepuram District,
Kancheepuram

Respondents

...

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records in connection with the order of Detention passed by the second respondent dated 04.09.2017 in B.C.D.F.G.I.S.S.S.V. No.79/2017 against the petitioner son Sivakumar, Male aged 24 years S/o.Sekar, who is confined at Central Prison, Puzal-II, Chennai and set aside the same and direct the respondents to produce detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 mother of the detenu, namely, Thiru.Sivakumar, S/o.Sekar, Male, aged about 24 years. The detenu has been detained by the 2nd respondent by his order in BCDFGISSSV No.79/2017 dated 04.09.2017 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 unexplained delay with regard to the same.

4. Notice in this petition was issued on 10.10.2017, despite which, no counter affidavit has been filed by the State. However, 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 04.09.2017. The petitioner made a representation, dated 04.10.2017 the same was received on 09.10.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day, i.e., on 09.10.2017. The remarks were duly received on 16.10.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 27.10.2017.

6. It is the contention of the petitioner that there was an unexplained delay of 7 days in submitting the remarks by the Detaining Authority of which 2 days were Government Holidays, hence, there was an explained

delay of 5 days in submitting the remarks. Thereafter, there was another inordinate and unexplained delay of 11 days in considering the representation of which 3 days were Government Holidays, hence, there was another unexplained delay of 8 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 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 an unexplained delay of 5 days in submitting the remarks by the Detaining Authority and 8 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 BCDFGISSSV No.79/2017 dated 04.09.2017 passed by the 2nd respondent is set aside. The detenu, namely, Thiru.Sivakumar, S/o.Sekar, Male, aged about 24 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 V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

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

2.The District Collector, and
District Magistrate,
Kancheepuram District,
Kancheepuram.

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

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

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

H.C.P.No.1860 of 2017

RRK(19/12/2017)



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