

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2017

Coram

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

H.C.P.No.1911 of 2017

Rakesh Kumar

... Petitioner

Vs.

- 1.The Commissioner of Police
Office of the Commissioner of Police
Egmore, Chennai.
- 2.The Principal Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Secretariat,
Chennai - 600 009.
- 3.The Superintendent
Central Prison
Puzhal, Chennai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed by the first respondent herein and made in B.C.D.F.G.I.S.S.S.V.No.559/2017 dated 14.09.2017 and to set aside the same and directing the third respondent to produce the body of the detenu Thiru.Brammadev Sharma, S/o.Lakbak Sharma, aged 58 years, now confined in Central Prison, Puzhal, Chennai before this Court and thereby setting him at liberty.

For Petitioner : Mr.T.S.Srinivasan
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 son of the detenu, namely, Brammadev Sharma, S/o.Lakbak Sharma, male, aged about 58 years. The detenu has been detained by the first respondent by his order in B.C.D.F.G.I.S.S.S.V.No.559/2017 dated 14.09.2017, 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 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 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 14.09.2017. The petitioner made representations, dated 30.09.2017 and the same was received on 04.10.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on the same days, i.e., 04.10.2017. The remarks were duly received on 13.10.2017. 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 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. Thereafter, there was another delay of 14 days in

considering the representation, of which 5 days were Government Holidays, hence, there was another inordinate delay of 9 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 inordinate and unexplained delay of 7 days in submitting the remarks by the Detaining Authority and 9 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 B.C.D.F.G.I.S.S.S.V.No.559/2017, dated 14.09.2017, passed by the first respondent is set aside. The detenu, namely, Brammadev Sharma, S/o.Lakbak Sharma, Male, aged about 58 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//

Sub Assistant Registrar

kas/vsm

To

- 1.The Commissioner of Police
Office of the Commissioner of Police
Egmore, Chennai.
- 2.The Principal Secretary
Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Secretariat,
Chennai - 600 009.
- 3.The Superintendent
Central Prison
Puzhal, Chennai
(In duplicate for communication to the detenu)
- 4.The Additional Public Prosecutor,
Madras High Court,
Chennai.
5. The Joint Secretary to Government
Public Law and order department
Fort St.George Secretariat
Chennai

H.C.P.No.1911 of 2017

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