

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM:

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

H.C.P. No.545 of 2017

Deepa ... Petitioner/Wife of the
detenue

-vs-

State Rep.by

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

2.The District Magistrate &
District Collector,
Salem District, Salem

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in C.M.P.No. 19/GOONDA/C2/2017 dated 04.04.2017 on the file of the second respondent and quash the same as illegal and direct the respondent to produce the Tamil Selvan S/o Periasamy, aged about 22 years, now confined at Central Prison, Salem, set him at liberty.

For Petitioner : Mr.M. Mohammed Saifulla

For Respondents: Mr.V.M.R. Rajendran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by N. SATISH KUMAR, J.]

The petitioner is the wife of the detenu, namely, Tamil selvan, son of Periyasamy, male, aged about 22 years. The detenu has been detained at Central Prison, Salem, as per the Order of the second respondent in C.M.P.No.19/GOONDA/C2/2017, dated 04.04.2017, 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.

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 04.04.2017. The petitioner made a representation, dated nil and the same was received on 08.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.05.2017. The remarks were duly received on 21.06.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 22.06.2017.

6. It is the contention of the petitioner that there was a delay of 43 days in submitting the remarks by the Detaining Authority, of which 12 days were Government Holidays and hence there was an inordinate delay of 31 days in submitting the remarks.

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 the subject case, admittedly, there is an inordinate and unexplained delay of 31 days in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.19/GOONDA/C2/2017, dated 04.04.2017, passed by the second respondent is set aside. The detenu, namely, Tamil selvan, son of Periyasamy, aged about 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(CS II)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Principal Secretary to Government,
State of Tamilnadu, Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Joint Secretary Public (L& O)
Fort St. George, Ch-9
- 3.The District Magistrate & District Collector,
Salem District, Salem
- 4.The Superintendent,
Central Prison, Salem.
- 5.The Additional Public Prosecutor,
Madras High Court, Madras.

H.C.P. No.545 of 2017

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ss (5/10/2017)