

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM:

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

H.C.P. No.625 of 2017

S.Amutha

... Petitioner/Wife
of the Detenu

-Vs-

1. The Government of Tamil Nadu
Rep.by its Principal Secretary
Home, Prohibition and Excise Department
Secretariat, Fort St.George, Chennai
 2. The Commissioner of Police
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai -7
 3. The Superintendent of Prison
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 relating to the detention order passed by the 2nd respondent in No.121/BCDFGISSSV/2017 dated 04.4.2017 and quash the same and consequently to produce the detenu Saravanan @ Sridhar @ Sottai Sridhar S/o Sundaram @ Veeranathan, aged about 47 years before this Court and he is detained at the central prison, Puzhal, Chennai and to release and set him liberty forthwith.

For Petitioner : Mr.G.Saravana Kumar

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

O R D E R

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

The petitioner is the wife of the detenu, namely, Saravanan @ Sridhar @ Sottai Sridhar, S/o. Sundaram @ Veeranathan, Male, aged about 47 years. The detenu has been detained by the 2nd respondent by his order in 121/BCDFGISSSV/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 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, 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. सत्यमेव जयते

5. The Detention Order in question was passed on 04.04.2017. The petitioner made a representation, dated 18.4.2017 and the same was received on 20.04.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.04.2017. The remarks were duly received on 25.04.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.05.2017.

6. It is the contention of the petitioner that there was a delay 31 days in considering the representation, of which 9 days were Government Holidays, hence, there was inordinate delay of 22 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 22 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 121/BCDFGIISSSV/2017 dated 04.04.2017, passed by the 2nd respondent is set aside. The detenu, namely, Saravanan @ Sridhar @ Sottai Sridhar, Son of Sundaram @ Veeranathan, aged about 47 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

ga

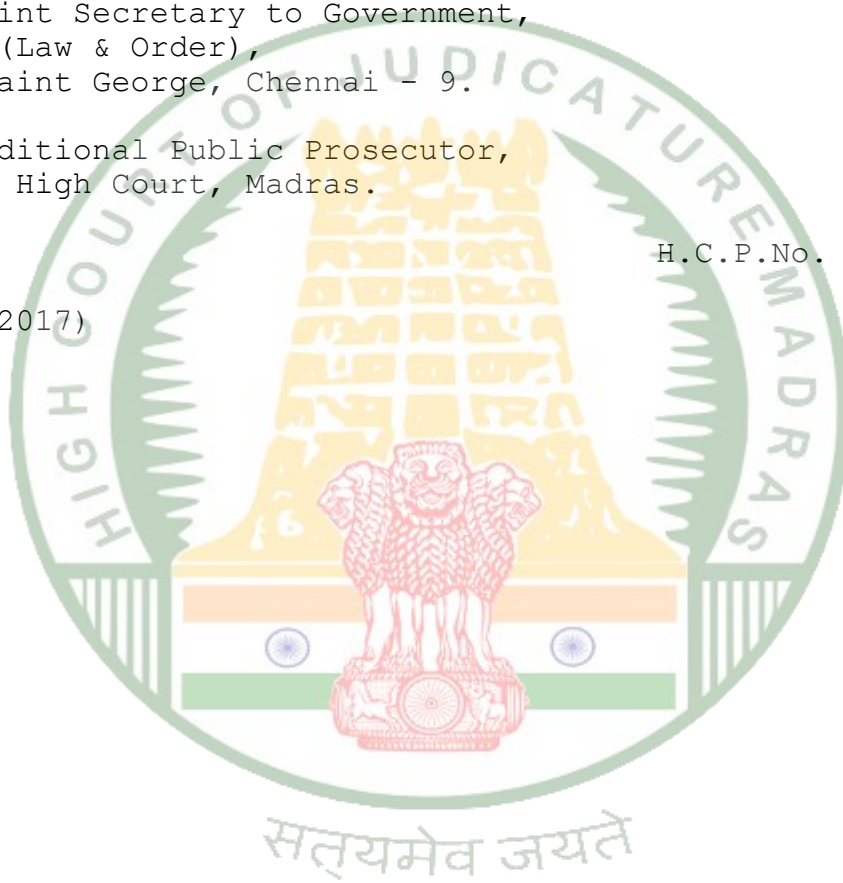
To:

1. The Principal Secretary
Home, Prohibition and Excise Department
Secretariat, Fort St.George, Chennai

2. The Commissioner of Police
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai -7
3. The Superintendent of Prison
Central Prison, Puzhal, Chennai
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Additional Public Prosecutor,
Madras High Court, Madras.

H.C.P.No. 625 of 2017

NRJK(CO)
CA(11/10/2017)



WEB COPY