

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM:

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

H.C.P.No.736 of 2017

Essthar .. Petitioner
Vs.

1.The State of Tamil Nadu
rep. By its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai-9.

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

* * *

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order in No.207/BCDFGISSSV/2017, dated 21.04.2017, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu, Saravanan, S/o.Palani, aged about 23 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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

ORDER

[Order of the Court was made by N.Sathish Kumar, J.]

1. The petitioner is the mother of the detenu - P.Kalimuthu, S/o.Perumal, aged about 23 years. The detenu has been detained by the second respondent by his order in 207/BCDFGISSSV/2017, dated 21.04.2017, holding him to be a "Goonda", as contemplated under Section 3(1) 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 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 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.

5. The Detention Order in question was passed on 21.04.2017. The petitioner made a representation dated 08.05.2017, and the same was received by the Government on 11.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.05.2017. The remarks were duly received on 23.05.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 15.06.2017.

6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which, 4 days were Government Holidays and hence there was an inordinate delay of 6 days in submitting the remarks. Thereafter, there was again a delay of 22 days in considering the representation, of which 6 days were Government Holidays, hence, there was another inordinate delay of 16 days in considering the representation.

7. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble 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*, [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, [1980 (2) SCC 321], the Hon'ble 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 6 days in submitting the remarks by the Detaining Authority and 16 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 dated 21.04.2017, passed by the second respondent in No.207/BCDFGISSSV/2017, is quashed. The detenu, namely, Saravanan, S/o.Palani, aged about 23 years, is ordered to be set at liberty forthwith, unless he 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(CO)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1.The Secretary,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

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

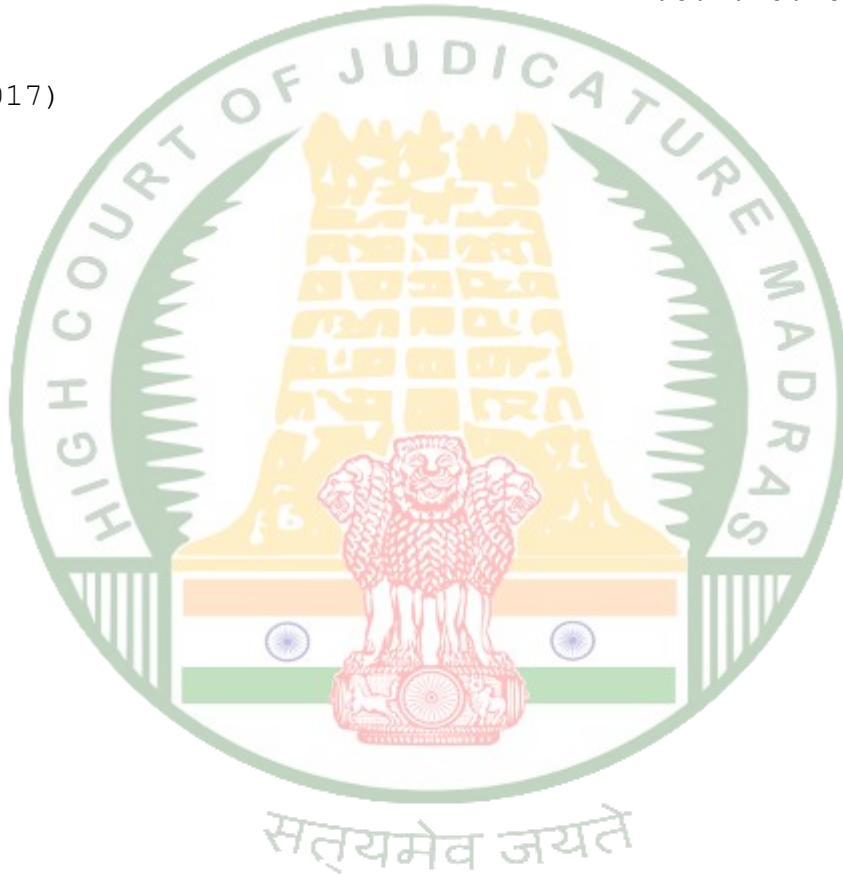
3. The Public Prosecutor,
Madras High Court,
Chennai.

4.The Superintendent,
Central Prison, Puzhal, Chennai
(In duplicate for communication to Detenue)

5.The Joint Secretary to Government,
Public(Law & Order)
Fort st.George, Ch-9.

H.C.P.No.736 of 2017

AR(CO)
ss(4/10/2017)



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