

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2017

Coram

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

H.C.P.No.922 of 2017

Madhavan

... Petitioner

Vs.

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

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce my person before this Court and call for the records in the above Detention order No.222/BCDFGISSSV/2017 dated 29.04.2017 passed by the second respondent detaining me as Goonda and set aside the same as illegal and unsustainable.

For Petitioner : Mr.K.S.Murugan

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

ORDER

(Order of the Court was made by **N.SATHISH KUMAR, J**)

The petitioner is the detenu, namely, Madhavan, Son of Raji, aged about 48 years. The detenu has been detained by the second respondent by his order No.222/BCDFGISSSV/2017 dated 29.04.2017, 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 representations 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 representations, 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 29.04.2017. The petitioner made representations, dated 24.05.2017, Nil, & 09.06.2017 and the same was received on 31.05.2017, 14.06.2017 & 14.06.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 31.05.2017 in respect of the first representation. Insofar as the second representation is concerned, remarks were called for on 14.06.2017. Insofar as the third representation is concerned, remarks were called for on 14.06.2017. The remarks were duly received on 09.06.2017 in respect of the first representation. Insofar as the second representation, remarks were duly received on 21.06.2017. Insofar as the third representation, remarks were duly received on 21.06.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 20.06.2017, 24.06.2017 & 24.06.2017.

6. It is the contention of the petitioner that in respect of the first representation 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. Insofar as the second representation is concerned there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. Insofar as the third representation is concerned there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 5 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 **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 7 days in submitting the remarks by the Detaining Authority in respect of the first representation. Insofar as the second representation is concerned, there is an inordinate and unexplained delay of 5 days in submitting the remarks by the Detaining Authority. Insofar as the third representation is concerned, there is an inordinate and unexplained delay of 5 days in submitting the remarks by the Detaining Authority. 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 Order No.222/BCDFGISSSV/2017 dated 29.04.2017, passed by the second respondent is set aside. The detenu, namely, Madhavan, Son of Raji male, aged about 48 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.

(R.S.A., J.)

(N.S.K., J.)

23.10.2017

Index : yes/no

vsm/msm

Note: Issue order copy today



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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Additional Public Prosecutor,
Madras High Court, Chennai.



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RAJIV SHAKDER, J.
and
N.SATHISH KUMAR, J.

vsm



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