

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2017

Coram

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

H.C.P.No.1526 of 2017
and Crl.M.P.No.13877 of 2017

Smt.K.Deivamani

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary to Government,
Prohibition and Excise Department, (Home)
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate
Kancheepuram District,
Kancheepuram.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records relating to the detenu's detention order passed by the 2nd respondent dated 21.07.2017 in No.BCDFGISSSV No.66/2017 and set aside the same and produce the detenu Nilavarasan @ Nila, male aged about 22, Son of Krishnana, now detained in Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.S.Elan Kumaran

For Respondents : Mr.V.M.R.Rajentran,

Addl. Public Prosecutor.

ORDER

(Order of the Court was made by RAJIV SHAKDER, J)

Crl.M.P.No.13877 of 2017
in H.C.P.No.1526 of 2017

1. This is an application seeking early hearing in H.C.P.No.1526 of 2017.

2. A perusal of the record shows that by virtue of order dated 21.08.2017, notice was issued and a further direction was issued that the matter be posted for hearing “by” 28.11.2017. As it would be obvious, no fixed date has been notified in the matter.

3. Accordingly, we allow the petition and are inclined to hear the matter today, as the learned Additional Public Prosecutor informs us that there has been a delay in considering the representation filed by the detenu.

4. The petition is, accordingly, disposed of in terms of the observations made above.

H.C.P.No.1526 of 2017

5. The petitioner is the mother of the detenu, namely, Nilavarasan @ Nila, S/o.Krishnan, male, aged about 22 years. The detenu has been detained

by the second respondent by his order in No.66/BCDFGISSSV/2017 dated 21.07.2017, 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.

6. 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.

7. 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.

8. 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.

9. The Detention Order in question was passed on 21.07.2017. The petitioner made two representations, dated 29.07.2017 & 09.08.2017 and the same were received on 01.08.2017 and 11.08.2017 respectively. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.08.2017 and 11.08.2017 respectively. The remarks were duly received on 08.08.2017 & 24.08.2017 respectively. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 16.08.2017 & 11.09.2017.

10. It is the contention of the petitioner that in respect of the first representation 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 by the Detaining Authority. Thereafter, there was another delay of 8 days in considering the representation, of which 4 days were Government Holidays and hence there was an inordinate delay of 4 days in considering the representation. Insofar as the second representation is concerned, there was

was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence, there was an inordinate delay of 7 days in submitting the remarks by the Detaining Authority. Thereafter, there was another delay of 18 days in considering the representation, of which 7 days were Government Holidays and hence there was an inordinate delay of 11 days in considering the representation.

11. 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.

12. 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.

13. 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.

14. In the subject case, admittedly, in respect of first representation is concerned there is an inordinate and unexplained delay of 5 days in submitting the remarks by the Detaining Authority and 4 days in considering the representation. Insofar as the second representation is concerned, there is an inordinate and unexplained delay of 7 days in submitting the remarks by the Detaining Authority and 11 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

15. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.66/BCDFGISSSV/2017 dated 21.07.2017, passed by the second respondent is set aside. The detenu, namely, Nilavarasan @ Nila, S/o.Krishnan, male, 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.

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(R.S.A., J.)

(N.S.K., J.)

10.11.2017

Index : yes/no

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Note: Issue order copy today

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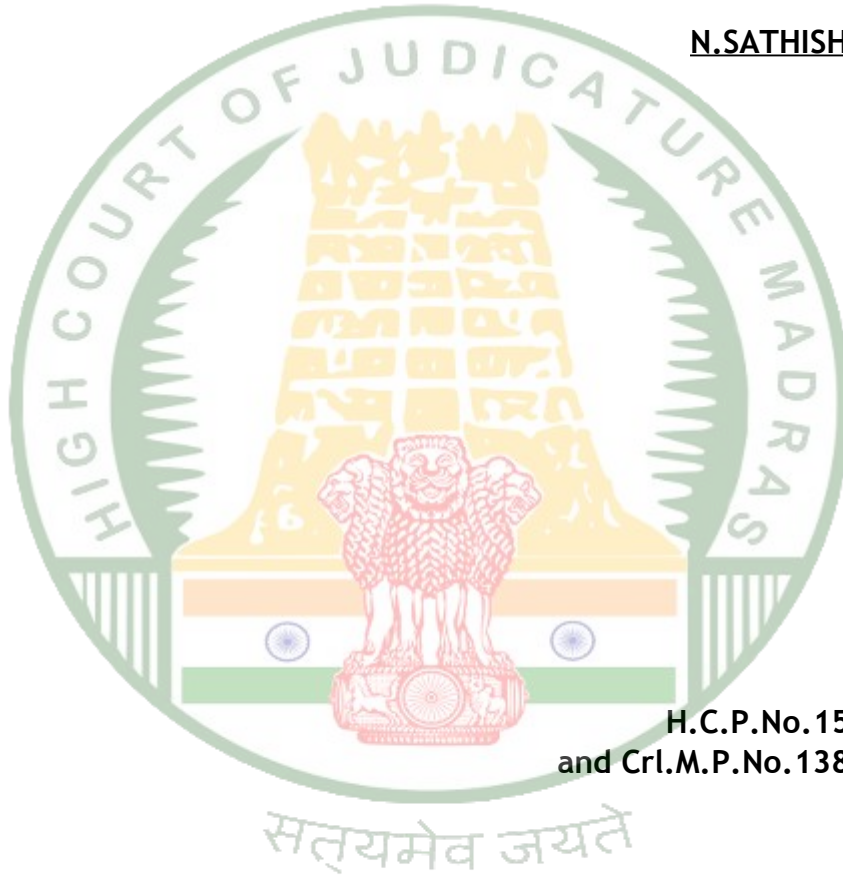
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- 3.The Superintendent,
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- 4.The Public Prosecutor,
Madras High Court,
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