

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED:06.10.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.[MD].No.1274 of 2017

Rabiyathul Pajiriya

: Petitioner

Vs.

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

2. The Commissioner of Police,
Tiruchirappalli City
Tiruchirappalli.

3. The Superintendent of Prison,
Central Prison, Tiruchirappalli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records pertaining to the impugned detention order passed by the 2nd respondent C.No.08/Detention/C.P.O/T.C./2017, dated 10.03.2017 in detaining the detenu under the Tamil Nadu Act 14 of 1982 as a GOONDA and quash the same and direct the respondents to produce the detenu, namely, Mohammed Farook @ Bandha Farook, S/o.Sulaiman, aged about 37 years, now detained at Tiruchirappalli Central Prison, before this Court and set him at liberty forthwith.

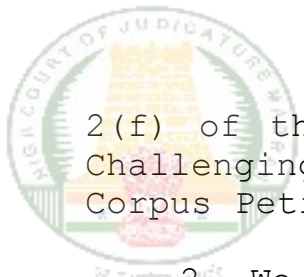
For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor

O R D E R[Order of the Court was made by **R.SUBBIAH, J.**]

The present Habeas Corpus Petition has been filed by the mother of the detenu - Mohammed Farook @ Bandha Farook, S/o.Sulaiman, aged about 37 years. The detenu has been detained, as per the order of the second respondent in C.No.08/Detention/C.P.O/T.C./2017, dated 10.03.2017, under Section



2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with 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 carefully.

3. The learned counsel for the petitioner mainly raised two grounds, namely,

(i) The affidavit filed by the sponsoring authority was attested by the detaining authority himself prior to the date of passing the detention order. In this regard, drawing the attention of this Court to the affidavit submitted by the Sponsoring Authority to the Detaining Authority, the learned counsel for the petitioner demonstrated that the Detaining Authority attested the affidavit filed by the sponsoring authority on 09.03.2017 and passed the detention order on 10.03.2017. The learned counsel for the petitioner further submitted that the attestation made by the Detaining Authority in the affidavit filed by the Sponsoring Authority would show the predetermination of mind on the part of the detaining authority in passing the order of detention; and

(ii) that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have heard the learned Additional Public Prosecutor appearing for the State and perused the records carefully.

6. The issue involved in this Habeas Corpus Petition has already been dealt with, elaborately, by this Court in H.C.P.(MD) No.857 of 2016, dated 24.01.2017, [Muthukumar @ Vellaian, Vs. The Secretary to Government, Home Prohibition and Excise Department, Chennai - 600 009], wherein this Court, after having considered various Judgments of this Court as well as the Hon'ble Supreme Court, in Paragraph No.11, has held as follows:-



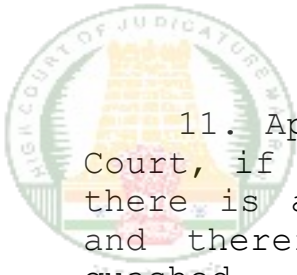
"11.Of-course, it is true that the detaining authority is obligated to consider the materials placed before it independently and then to pass order on merits, without influencing the contents set out in the affidavit. However, the detaining authority cannot play a dual role, i.e., in one role he, being as a higher officer, affirms the necessity of the action to be taken and in another role, he, being the detaining authority, passes an order of detention. If the affidavit of the sponsoring authority is signed by some other higher official, then the question of possibility of predetermination would not arise. Since, in this case, the detaining authority played dual role, the contention of the learned counsel for the petitioner that the same led to predetermination of mind on the part of the detaining authority, is acceptable.

7. Apart from the above, in this case, the Detention Order was passed on 10.03.2017. As against the same, the petitioner made a representation on 29.08.2017. The remarks were called for by the Government from the Detaining Authority on 31.08.2017. The remarks were received on 07.09.2017. Thereafter, the Government considered the issue and passed the order rejecting the representation on 18.09.2017. It is the contention of the petitioner that there was delay of 5 days in submitting the remarks by the Detaining Authority and there was delay of 6 days on the part of the Government in considering the same.

8. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further 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 of the detenu.

9. 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/detenu would be sufficient to set aside the detention order.

10. 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 detention illegal. This principle has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.



11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 11 working days and therefore, the impugned detention order is liable to be quashed.

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12. Following the decisions cited supra, this Habeas Corpus Petition is allowed and the impugned detention order in C.No.08/Detention/CPO/TC/2017, dated 10.03.2017, passed by the second respondent is set aside and the detenu by name Mohammed Farook @ Bandha Farook, S/o.Sulaiman, aged about 37 years, is directed to be released forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison, Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law & Order),
For St.George, Chennai-09.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
H.C.P. [MD].No.1274 of 2017
06.10.2017

RR

SDS/SV:MMS/SAR 2/20.10.2017/4P/6C