



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.179 of 2017

Suresh

... Petitioner

-vs-

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai- 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the Respondent No.2 in Cr.M.P.No.05/D.O./2017, dated 01.02.2017 and quash the same and direct the Respondents to produce the body or person of the detenu by name Suresh, son of Kalanjiyam, aged about 45 years, now detained at Madurai Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor

O R D E R

[Order of the Court by M.M.SUNDRESH, J.]

The petitioner is detenu - Suresh, aged about 45 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.05/D.O./2017, dated 01.02.2017 holding him to be a "Drug Offender", as contemplated under Section 2(e) 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. The petitioner challenges the detention order, dated 01.02.2017 on the ground that the same suffers from due application of mind since the bail application was dismissed on 30.01.2017, but a reliance has been made on the order passed in Cr.M.P.No.196 of 2017, dated 24.01.2017, which is much prior to the above said dismissal order, dated 30.01.2017. Apart from the same, the petitioner has made a representation, dated 03.02.2017 and the same was disposed only on 02.03.2017 and thus there is a delay. Therefore, on this two grounds, the detention order is liable to be set aside.

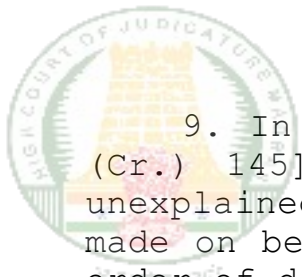
4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

5. 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.

6. The Detention Order in question was passed on 01.02.2017. The petitioner made a representation, dated 03.02.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.02.2017. The remarks were duly received on 17.02.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 28.02.2017.

7. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority.

8. 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 the same cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by 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 would be sufficient to set aside the order of detention.

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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 very detention illegal.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority.

12. In the result, the Detention Order, passed by the second respondent, in his proceedings in Cr.M.P.No.05/D.O/2017, dated 01.02.2017, is quashed. The detenu, namely, Suresh is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

13. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To:

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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2. The District Collector and District Magistrate,
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Ramanathapuram District.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Am/cp/

RL/6C/3P/MR/SAR1/14/7/2017

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