



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P. (MD) No.34 of 2017

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A.Vanumamalai

: Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
St. George Fort,
Chennai-9.

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

3.The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.

4.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records pertaining to the order of detention passed by the 2nd respondent, vide his proceedings in M.H.S. Confdl No.174/2016, dated 09.12.2016 and quash the same and consequently set the detenu, by name ARUMUGAM S/o.A.Vanumamalai (Male, aged 24 years), who is presently confined at Central Prison, Palayamkottai, Tirunelveli, at liberty.

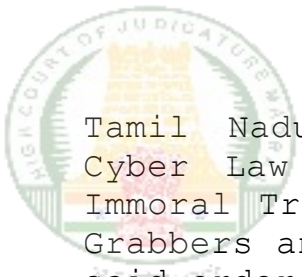
For Petitioner : Mr.R.Anand

For Respondents : Mr.C.Ramesh
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by M.V.MURALIDARAN, J.]

The petitioner is the father of the detenu Arumugam. The detenu has been detained by the 2nd respondent, by Order in M.H.S. Confdl No.174/2016, dated 09.12.2016, holding the detenu to be a "Sand Offender", as contemplated under Section 3(1) of the



Tamil Nadu Prevention of dangerous activities of Bootleggers, Cyber Law Offenders, Drug Offender, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act 1982 (Tamil Nadu Act 14/1982). The said order is under challenge in this Habeas Corpus Petition.

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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 detenu was not considered on time and there was an inordinate and unexplained delay.

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.

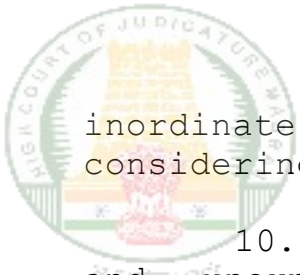
5. The Detention Order in question was passed on 09.12.2016. The detenu made a representation on 24.12.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 27.12.2016. The remarks were duly received on 30.12.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 30.01.2017.

6. It is the contention of the petitioner that there was a delay of 17 days in considering the representation of the detenu.

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.

<https://hcservices.ecourts.gov.in/hcservices/>
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 17 days in considering the representation of the detenu. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl No.174/2016, dated 09.12.2016 is quashed. The detenu, namely Arumugam, son of A.Vanumamalai is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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

Sd/-

Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
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2.The District Collector and District Magistrate,
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Tirunelveli.

3.The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.

4.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

5.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s. R.ANAND Advocate in SR. No.57032

ER/AR

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