



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2017

CORAM:

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

H.C.P.(MD) No.390 of 2017

Ramar

... Petitioner

-vs-

1.Government of Tamil Nadu,
Represented by Secretary to Government,
Home, Prohibition and Excise Department,
Fort Saint George
Chennai - 600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent,
Borster School cum District Prison,
Pudukkottai.

... 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 2nd respondent in No.81/BCDFGISSSV/2016 dated 10.11.2016 and quash the same and direct the respondents to produce the person or body of the petitioner's son namely Sakthivel, son of Ramar, aged about 21 years, now confined at Borster School cum District Prison, Pudukkottai and set him at liberty forthwith.

For Petitioner : Mr.B.Jameel Arasu
For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor.

O R D E R

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

The petitioner is the father of the detenu, namely, Sakthivel, son of Ramar, Male, aged about 21 years. The detenu has been detained by the second respondent by his order in Detention Order No.81/BCDFGISSSV/2016, dated 10.11.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1992. 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.

WEB COPY

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 representation made by the petitioner 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 10.11.2016. The petitioner made a representation on 21.11.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 23.11.2016. The remarks were duly received on 28.11.2016. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 22.12.2016.

6. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 3 days in submitting the remarks. Thereafter, there was another delay of 20 days in considering the representation, of which 8 days were Government Holidays, hence, there was another inordinate delay of 12 days in considering the representation.

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 3 days in submitting the remarks by the Detaining Authority and 12 days in considering the representation. 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 in Detention Order No.81/BCDFGISSSV/2016, dated 10.11.2016, passed by the second respondent is set aside. The detenu, namely, Sakthivel, son of Ramar, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort Saint George, Chennai - 600 009.
2. The Commissioner of Police,
Madurai City, Madurai.
3. The Superintendent,
Borster School cum District Prison,
Pudukkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort st., George, Chennai-600 009.

H.C.P. (MD) No.390 of 2017
11.07.2017

dss/smn

JM/SKN RSK/SAR 2/20.07.2017/3P/6C