



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.07.2017

CORAM:

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P(MD)No.398 of 2017

Whitewin

: Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by the Principal Secretary to Government,
Home , Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009

2.The District Collector/ District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

: 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, connected with the detention order passed in P.D.No.15/2017 dated 28.02.2017 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Whitewin, aged about 46 years, S/o.Ponicop @ Kolicop, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

For Respondents

: Mr.C.Ramesh

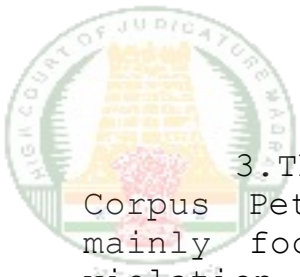
Additional Public Prosecutor.

ORDER

(Order of the Court was made by **M.M.SUNDRESH, J**)

The petitioner is the detenu- Whitewin S/o.Ponicop @ Kolicop, aged about 46 years and detenu has been detained by the second respondent by his proceedings in P.D.No.15/2017, dated 28.02.2017, holding him to be a "GOONDA", as contemplated under Section 2(f) 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. 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.

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 detainee 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 28.02.2017. The petitioner made a representation dated 10.03.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 14.03.2017. The remarks were duly received on 28.03.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 20.04.2017.

6. It is the contention of the petitioner that there was a delay of 9 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 12 days in considering the representation.

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 detainee.

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 detainee would be sufficient to set aside the order of detention.

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 9 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 Detention Order passed by the second respondent, in his proceedings in P.D.No.15/2017, dated 28.02.2017 is quashed. The detenu, namely, Whitewin, Son of Ponicip @ Kolicop, aged about 46 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Co)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

1.The Principal Secretary to Government,
Home , Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009

2.The District Collector/ District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

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

5.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St. George, Chennai-9.

rmi/myr

MAS/KP/SAR1:08.08.2017:3P-6C

ORDER MADE IN
H.C.P(MD)No.398 of 2017
Dated:24.07.2017