



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.05.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

H.C.P(MD)No.40 of 2017

Mohamed Rafiq

: Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George,
Chennai - 600 009.

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

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

4.The Inspector of Police,
Sattur Town Police Station,
Sattur, Virudhunagar 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, connected with the detention order of the second respondent in detention order in Cr.M.P.No.32 of 2016, dated 17.12.2016 and to quash the same and direct the respondents to produce the detenu, by name, Mohamed Rafiq, Son of Mohamed Hussain, aged about 43 years detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Annadurai

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 detenu, who has been detained by the second respondent, by his proceedings in Cr.M.P.No.32 of 2016, dated 17.12.2016, branding him as a "Goonda" under Section 2(f) of the Tamil Nadu Act 14 of 1982. Challenging the same, the petitioner is before this Court with 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 detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

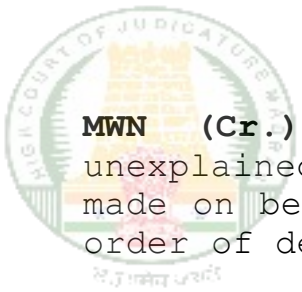
5. The Detention Order in question was passed on 17.12.2016. The petitioner made a representation dated 27.12.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 30.12.2016. The remarks were duly received on 27.02.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 13.03.2017.

6. It is the contention of the petitioner that there was a delay of twenty seven days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of twelve 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 detenu.

<https://hcservices.ecourts.gov.in/hcservices/>

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.

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 twenty seven days in submitting the remarks by the Detaining Authority and twelve days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, this Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, in his proceedings in Cr.M.P.No.32 of 2016, dated 17.12.2016, is quashed. The detenu, namely, Mohamed Rafiq, Son of Mohamed Hussain, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-
Assistant Registrar(C)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Virudhunagar District,
Virudhunagar.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Sattur Town Police Station,
Sattur, Virudhunagar District.



5.The Joint Secretary to Government ,
Public(Law & order),
Fort Saint George, Chennai-9.

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

+1 cc to Mr.M.Murali , Advocate in SR.No. 56536

PJL

AE/RSK/SAR3/24.05.2017/4P/8C

ORDER MADE IN
H.C.P(MD)No.40 of 2017
Dated:16.05.2017