



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2017

CORAM:

**THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR**

H.C.P(MD)No.425 of 2017

Pathartheen : 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 Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

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

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the respondent no.2 in No.19/BCDFGISSSV/2017 dated 07.03.2017 and quash the same and direct the respondents to produce the body of the detenu by name Pathartheen, son of Sahul Hameed, aged about 21 years detained in Madurai Central Prison before this Court and set him at liberty forthwith.

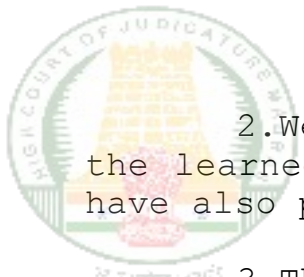
For Petitioner : Mr.R.Alagumani

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- Pathartheen, S/o.Sahul Hameed, aged about 21 years and detenu has been detained by the second respondent by his proceedings in No.19/BCDFGISSSV/2017, dated 07.03.2017, 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 07.03.2017. The petitioner made representations, dated 17.03.2017 and the same were received on 21.3.2017 and 17.4.2017 respectively. Thereafter, remarks were called for by the Government from the Detaining Authority on 21.3.2017 and 18.4.2017. The remarks were duly received on 27.3.2017 and 21.4.2017 respectively. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 21.4.2017.

6. It is the contention of the petitioner that there was a delay of 24 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holidays and hence there was an inordinate delay of 16 days in submitting the remarks.

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 241], 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 16 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 No.19/BCDFGISSSV/2017, dated 07.03.2017 is quashed. The detenu, namely, Pathartheen, Son of Sahul Hameed, aged about 21 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(P&A)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-9

vsn
RL/6C/3P/MR/KKR/SAR1/23/8/2017

ORDER MADE IN