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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2017

CORAM:

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

AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P(MD)No.436 of 2017

Bose

: 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,
Borstal School and District Jail,
Pudukottai 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 Respondent No.2 in 02/BCDFGISSSV/2017 dated 03.01.2017 and quash the same and direct the respondents to produce the detenu by name Boominathan, son of Bose, aged about 19 years detained in Borstal School and District Jail, Pudukottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.C.Ramesh

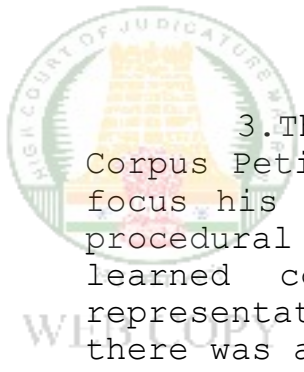
Additional Public Prosecutor.

ORDER

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

The petitioner is the father of the detenu-Boominathan S/o.Bose, aged about 19 years and detenu has been detained by the second respondent by his proceedings in No.02/BCDFGISSSV/2017, dated 03.01.2017, 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 03.01.2017. The petitioner made a representation dated 18.03.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.03.2017. The remarks were duly received on 04.04.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 18.05.2017.

6. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 31 days in considering the representation.

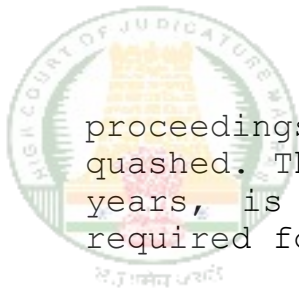
7. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken 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 5 days in submitting the remarks by the Detaining Authority and 31 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.2 in No.02/BCDFGISSSV/2017 dated 03.01.2017 is quashed. The detenu, namely, Boominathan, Son of Bose, aged about 19 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 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,
Borstal School and District Jail,
Pudukottai District.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai-9.

RMI/SJ

JS/SV/SAR.2/28.7.2017/3P-5C

ORDER MADE IN
H.C.P(MD)No.436 of 2017
Dated:10.07.2017