

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 10.07.2017

CORAM:

WEB COPY

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

H.C.P(MD)No.469 of 2017

Shanmugathai

: Petitioner

Vs.

1. The Principal Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, St.George Fort, Chennai-9.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli District.
- 4.The Inspector of Police,
Puliyangudi Police Station,
(In-charge Chokkampatti Police Station)
Tirunelveli 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 passed by the Respondent No.2 in his proceedings in M.H.S.Confdl.No:4/2017 dated 17.01.2017 and quash the same and consequently set the detenu by name Velsamy, son of Subbiah Konar, (Male, aged about 40 years) who is presently confined at Central Prison, Palayamkottai, Tirunelveli, at liberty.

For Petitioner : Mr.S.M.Anantha Murugan.

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor.**ORDER**(Order of the Court was made by **M.M.SUNDRESH, J**)

The petitioner is the wife of the detenu-Velsamy
S/O.Subbiah Konar, aged about 40 years and detenu has been
detained by the second respondent by his proceedings in



M.H.S.Confdl No.04/2017, dated 17.01.2017, 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.

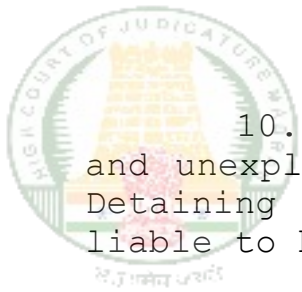
5. The Detention Order in question was passed on 17.01.2017. The petitioner made a representation dated 13.02.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.02.2017. The remarks were duly received on 23.02.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 27.02.2017.

6. It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority.

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 506], 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 8 days in submitting the remarks by the Detaining Authority. 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 M.H.S.Confdl No:04/2017 dated 17.01.2017 is quashed. The detenu, namely, Velsamy, Son of Subbiah Konar, aged about 40 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(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, St.George Fort, Chennai-9.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli District.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George, Chennai-09.
5. The Inspector of Police,
Puliangudi Police Station,
(In-charge Chokkampatti Police Station)
Tirunelveli District.

+1cc to M/S. K.KARMEGAM, Advocate, SR.No.64282.

ORDER MADE IN
H.C.P (MD) No.469 of 2017
10.07.2017