

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

DATED : 04.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
H.C.P.(MD) No.50 of 2017

Muniyasamy

... 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 District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Thoothukudi District,
Thoothukudi.

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

... Respondents

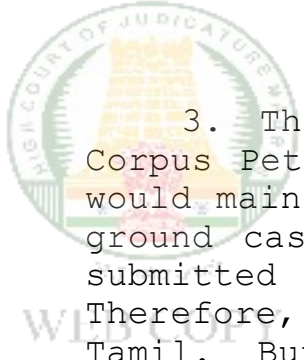
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records, connected with the detention order of the Respondent No.2 in P.D. No.56/2016 dated 14.12.2016 and quash the same and direct the Respondents to produce the body or person of the detenu by name Muniyasamy, son of Karuppasamy, aged about 33 years, now detained at Palayamkottai Central Prison before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani.

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor.**O R D E R**[Order of the Court was made by **M.M.SUNDRESH, J.**]

The petitioner is the detenu. The detenu has been detained by the second respondent by his order in P.D.No.56 of 2016, dated 14.12.2016, 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 appearing 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 appearing for the petitioner would mainly focus his argument on three grounds. Firstly, in the ground case, the petitioner has been acquitted. Secondly, it is submitted that the petitioner is not well-versed in English. Therefore, he requested for furnishing copies of the documents in Tamil. But, the same has not been furnished. Thirdly, the representation made by the petitioner on 05.01.2017 has been considered on 04.02.2017 after a long delay.

4. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. He would further submit that though there was delay in considering the representation, 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 14.12.2016. The petitioner made a representation on 05.01.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.01.2017. The remarks were duly received on 31.01.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 04.02.2016.

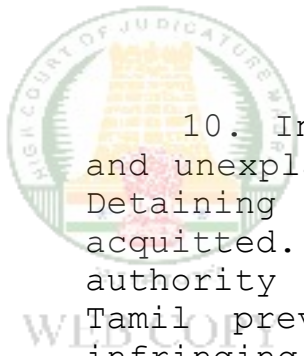
6. It is the contention of the petitioner that there was a delay of 21 days in submitting the remarks by the Detaining Authority, of which 8 days were Government Holidays and hence there was an inordinate delay of 13 days in submitting the remarks.

7. In *Rekha vs. State of Tamil Nadu*, reported in 2011 (5) SCC 244, the Honourable 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.

8. In *Sumaiya vs. The Secretary to Government*, reported in 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*, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that ~~any delay in considering the representation renders the very detention illegal.~~ and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

<https://hcmjcs.lcmjcs.gov.in/lcmjcs>



10. In the subject case, admittedly, there is an inordinate and unexplained delay of 13 days in submitting the remarks by the Detaining Authority. In the ground case the petitioner has been acquitted. Further, the failure on the part of the detaining authority to furnish copies in the language known to him i.e., Tamil prevented him from making an effective representation, infringing his fundamental right guaranteed under Article 22(5) of the Constitution of India. prevented him from making an effective representation. Therefore, on all the three grounds the impugned detention order is liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.56/2016, dated 14.12.2016, passed by the second respondent is set aside. The detenu, namely, Muniasamy, son of Karuppasamy, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(Records)

/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 District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
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Thoothukudi.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai-9.

+1cc to M/S. R.ALAGUMANI, Advocate, SR.No.63432.

H.C.P. (MD) No.50 of 2017
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