



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.515 of 2017

Shanmuga Lakshmi

... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector & District Magistrate,
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 relating to the Detention Order passed by the second respondent in H.S.(M) Confdl. No.10/17, dated 28.02.2017 and quash the same and direct the Respondents to produce the body or person of the Detenu namely Kaviarasan, S/o.Murugan, aged about 28 years (now detained at Central Prison, Palayamkottai) before this Court and set him at liberty.

For Petitioner : Mr.V.Sasi Kumar

For Respondents : Mr.T.Mohan

Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the mother of the detenu, namely, Kaviarasan, son of Murugan, Male, aged about 28 years. The detenu has been detained by the second respondent by his Order in H.S.(M) Confdl. No.10 of 2017, dated 28.02.2017, holding him to be a "GOONDA", as contemplated under Section 2 (f) of Tamil Nadu Act, 1962. 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.

WEB COPY

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 counsel appearing for the petitioner would further submit that in the grounds of detention, it has been stated that the detenu has filed a bail petition and the same has been dismissed, but no such bail petition and order copy have been furnished to the detenu. Thus, we are of the view that there is a non-application of mind.

5. 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.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. In such view of the matter, the impugned detention order is liable to be quashed.

7. The Detention Order in question was passed on 28.02.2017. The petitioner made a representation, dated Nil. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.03.2017. The remarks were duly received on 04.04.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.05.2017.

8. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which 4 days were Government Holidays and hence there was an inordinate delay of 11 days in submitting the remarks. Thereafter, there was another delay of 43 days in considering the representation, of which 14 days were Government holidays, hence, there was another inordinate delay of 29 days in considering the representation.



9. 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.

10. 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.

11. In **Tara Chand vs. State of Rajasthan and others**, reported in 1980 (2) SCC 321, the Honourable 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.

12. In the subject case, admittedly, there is an inordinate and unexplained delay of 11 days in submitting the remarks by the Detaining Authority and 29 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.10/2017, dated 28.02.2017, passed by the second respondent is set aside. The detenu, namely, Kaviarasan, son of Murugan, aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-III)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

1.The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai-600 009.

2.The District Collector & District Magistrate,
Thoothukudi District, Thoothukudi.

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

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

am

MAS/MR-KKR/SAR2:20.07.2017:3P-5C