



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P (MD) No.52 of 2017

Kadalmani @ Kadarkarai

: 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 Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli 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 M.H.S.Confdl No.179/2016, dated 29.12.2016 and quash the same and direct the Respondents to produce the body or person of the detenu by name Kadalmani @ Kadarkarai, son of Arunachalam, aged about 38 years, now detained at Palayamkottai Central Prison, before this 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 - Kadalmani alias Kadarkarai, aged about 52 years. The detenu has been detained by the second respondent by his order in M.H.S.(MD).Confdl.No.179/16, dated 29.12.2016, 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.

<https://hcservices.ecourts.gov.in/hcservices/>

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. The learned counsel for the petitioner has assailed the impugned order on two grounds one is in respect of that the detaining authority has relied upon a similar order for coming to his subjective satisfaction. The said order involves an accused who did not have any previous case, whereas in this case admittedly, the detenu is having 9 previous cases and the second ground is delay in considering the representation.

4. Though two 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.

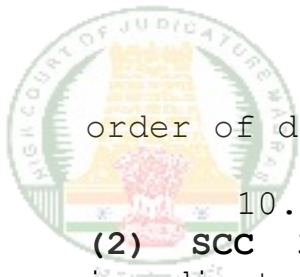
5. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been 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. The Detention Order in question was passed on 29.12.2016. The petitioner made a representation dated 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 18.01.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 31.01.2017.

7. It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 7 days in considering the representation.

8. 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 detenu.

9. 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 detenu would be sufficient to set aside the



order of detention.

10. 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 6 days in submitting the remarks by the Detaining Authority and 7 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

12. In the result, the Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl.No.179/2016, dated 29.12.2016, is quashed. The detenu, namely, Kadalmani alias Kadarkarai, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

13. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(RTI)

/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 Collector and District Magistrate,
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Tirunelveli District, Tirunelveli.

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

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

+1cc to Mr.R.ALAGUMANI Advocate in SR.No.63431

JKR

JS/MR.KKR/SAR.1/19.7.2017/3P-6C

ORDER MADE IN
H.C.P(MD)No.52 of 2017
Dated:04.07.2017