



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.53 of 2017

Gopal

... Petitioner

-vs-

- 1.The Principal Secretary to Government of Tamilnadu,
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,
Kanniyakumari District at Nagercoil.
- 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 entire records, connected with the detention order of the Respondent No.2 in P.C.No.87 of 2016, dated 23.12.2016 and quash the same and direct the Respondents to produce the body or person of the detenu by name Gopal, son of Subbiah, aged about 47 years, now detained at Palayamkottai Central Prison before this Hon'ble 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 by M.M.SUNDRESH, J.]

The petitioner is detenu - Gopal, aged about 47 years. The detenu has been detained by the second respondent by his order in P.D.No.87 of 2016, dated 23.12.2016 holding him to be a "Sexual Offencer", as contemplated under Section 2(ggg) 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. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the Detention Order, no bail application was pending. Though the detaining authority has made reliance on similar case anticipatory bail order relating to some other accused person in some other case for established the possibility of the detenu coming out on bail in the ground case. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Therefore, on this ground, the detention order is liable to be set aside.

4. 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.

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.

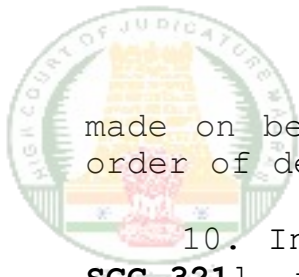
6. The Detention Order in question was passed on 23.12.2016. The petitioner made a representation, dated 05.01.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.01.2017. The remarks were duly received on 19.01.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 27.01.2017.

7. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 4 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) MNW (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 7 days in submitting the remarks by the Detaining Authority and 4 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 P.D.No.87 of 2016, dated 23.12.2016, is quashed. The detenu, namely, Gopal 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 (T&P)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Principal Secretary to Government of Tamilnadu,
Home, Prohibition and Excise Department,
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- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.R.ALAGUMANI, ADVOCATE IN SR No. 64355