



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2017

CORAM:

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

H.C.P(MD)No.544 of 2017

Muthaiyah

: Petitioner

Vs.

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

2.The District Magistrate and District Collector,
Dindigul District,
Dindigul.

3.The Superintendent,
Central Prison,
Madurai.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd respondent in Detention Order No.21/2017 dated 24.03.2017, quash the same and direct the respondents to produce the body of the detenu Ayyarsamy, Son of Muthaiyah (now detained at Central Prison, Madurai) before this Court and set him at liberty.

For Petitioner
For Respondents

: Mr.V.Kannan
: Mr.C.Ramesh
Additional Public Prosecutor.

ORDER

(Order of the Court was made by M.M.SUNDRESH, J)

The petitioner is the father of the detenu- Ayyarsamy, S/o.Muthaiah, aged about 25 years and detenu has been detained by the second respondent by his proceedings in Detention Order No.21/2017, dated 24.03.2017, holding him to be a "DRUG OFFENDER", as contemplated under Section 2(e) 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.

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 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 24.03.2017. The petitioner made a representation dated 03.04.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.04.2017. The remarks were duly received on 15.04.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 18.06.2017.

6. It is the contention of the petitioner that there was a delay of 4 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 23 days in considering the representation.

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.

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

9. 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 4 days in submitting the remarks by the Detaining Authority and 23 days in considering the representation. 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 Detention Order No.21/2017, dated 24.03.2017 is quashed. The detenu, namely, Ayyarsamy, Son of Muthaiah, aged about 25 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(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Magistrate and District Collector,
Dindigul District,
Dindigul.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.V.Kannan, Advocate, SR.No.73101
rmi/sj
RL/7C/3P/SKN/RSK/SAR1/30/8/2017

ORDER MADE IN