



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2017

CORAM:

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

H.C.P. (MD) No.559 of 2017

Sankar alias Periya Sankar

... Petitioner

-vs-

1.State of Tamil Nadu, rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Thanjavur District, Thanjavur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in P.D.No.11/2017 dated 02.04.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the Petitioner namely Sankar alias Periya Sankar, S/o.Manickam, male, aged 36, who is detained in Central Prison, Tiruchirappalli before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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 Sankar alias Periya Sankar, son of Manickam, aged about 36 years, is the detenu. The detenu has been detained by the second respondent by his order in P.D.No.11/2017 dated 02.04.2017, 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.

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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 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.

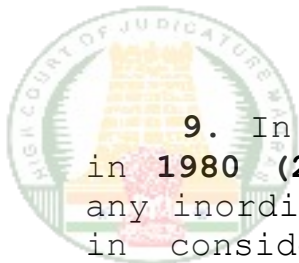
4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the 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 02.04.2017. The petitioner made a representation on 12.04.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.04.2017. The remarks were duly received on 27.04.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 25.05.2017.

6. It is the contention of the petitioner that there was a delay of 27 days in considering the representation by the Minister for Electricity, P & E after the Deputy Secretary dealt with the same, of which 8 days were Government Holidays, hence, there was inordinate delay of 19 days in considering the representation.

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 inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

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10. In the subject case, admittedly, there is an inordinate and unexplained delay of 21 days in considering the representation by the Minister for Electricity, P & E Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.11/2017, dated 02.04.2017, passed by the second respondent is set aside. The detenu, namely, Sankar alias Periya Sankar, son of Manickam, aged about 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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 - 9.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Thanjavur District, Thanjavur.
- 3.The Superintendent,
Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order), Secretariat, Chennai - 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SJ

MAS/KP/SAR2:28.09.2017:3P-6C

H.C.P. (MD) No.559 of 2017
14.09.2017