



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2017

CORAM

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

H.C.P(MD)No.637 of 2017

Ocha Thevar

...Petitioner

-vs-

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

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

3.The Superintendent,
Central Prison,
Madurai.

4.The Inspector of Police,
Cumbum North Police Station,
Theni District.

...Respondents

Prayer: This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the second respondent in Detention Order No.9/2017/C3 dated 30.03.2017 and to quash the same and direct the respondents to produce the body or person of the detenu, Ilandran (aged 36 years) S/o. Ocha Thevar, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner
For Respondents

:Mr.D.Ramesh Kumar
: 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 father of the detenu- Ilandran, S/o. Ocha Thevar, aged about 36 years and detenu has been detained by the second respondent by his proceedings in Detention Order



No.9/2017/C3, dated 30.03.2017, 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.

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 30.03.2017. The petitioner made a representation dated 07.04.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.04.2017. The remarks were duly received on 20.04.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 25.05.2017.

6. It is the contention of the petitioner that there was a delay of 5 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 of the detainee would be sufficient to set aside the order of detention.



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 5 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.9/2017/C3, dated 30.03.2017 is quashed. The detenu, namely, Ilandran, Son of Otcha Thevar, aged about 36 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(RTI)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
 - 2.The District Magistrate and District Collector,
Theni District, Theni.
 - 3.The Superintendent,
Central Prison,
Madurai.
 - 4.The Inspector of Police,
Cumbum North Police Station,
Theni District.
 - 5.The Joint Secretary to Government,
Public (Law and Order), Secretariat, Chennai
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- Cp/sj
RL/7C/3P/GT/SAR3/28/9/2017

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