



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2017

CORAM:

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

H.C.P.(MD) No.654 of 2017

Papanasam

... Petitioner

-vs-

1.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

2.The State respresented by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

3.The Inspector of Police,
Palayamkottai Crime Police Station,
Tirunelveli.

4.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in No.36/BCDFGISSSV/2016 dated 01.12.2016 and issue a Writ, order or direction more particularly in the nature of Writ of Habeas Corpus or any other order or direction, directing the respondents herein to produce the detenu Ramesh, son of Papanasam, aged 33 years herein who has been termed as "GOONDA" and now confined in Central Prison, Palayamkottai and set aside the same and set the detenu at liberty.

For Petitioner :Mr.T.Senthil Kumar

For Respondents :Mr.T.Mohan

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the father of the detenu, namely, Ramesh, Male, aged about 33 years. The detenu has been detained by the first respondent by his order in Detention Order No. 36/BCDFGISSSV/2016, dated 01.12.2016, 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.

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.

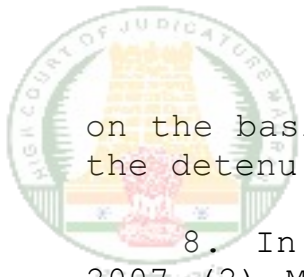
3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, 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 01.12.2016. The petitioner made a representation on 09.12.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.12.2016. The remarks were duly received on 15.12.2016. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 19.01.2017.

6. It is the contention of the petitioner that there was a delay of 31 days in considering the representation, of which 9 days were Government Holidays, hence, there was an inordinate delay of 22 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu*, reported in 2011 (5) SCC 244, the honorable 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 22 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 order of detention in Detention Order No.36/BCDFGISSSV/2016, dated 01.12.2016, passed by the first respondent is set aside. The detenu, namely, Ramesh, son of Papanasam, aged about 33 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 Commissioner of Police, Tirunelveli City, Tirunelveli.
- 2.The Principal Secretary to Government,
State of Tamil Nadu, Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 3..The Inspector of Police, Palayamkottai Crime Police Station,
Tirunelveli.
- 4.The Superintendent, Central Prison,
Palayamkottai, Tirunelveli.
- 5 The Joint Secretary to Government,, Public (Law & Order)
Department, Fort St.George, Chennai.
- 6 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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