



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2017

CORAM:

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

H.C.P(MD)No.690 of 2017

Thangaraj : Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent,
District Jail Cum Borstal School,
Pudukkottai.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in P.D.No.08/2017 dated 14.02.2017 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a GOONDA and quash the same and direct the respondents to produce the Detenu namely Vignesh @ Vigneswaran, S/o.Thangaraj, Male, aged about 20 years, who is detained in District Jail Cum Borstal School, Pudukkottai, before this Court and set him at liberty.

For Petitioner

: Mr.K.M.Karunakaran

For Respondents

: 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- vignesh @ Vigneswaran S/o.Thangaraj, aged about 20 years and detenu has been detained by the second respondent by his proceedings in P.D.No.08/2017, dated 14.02.2017, holding him to be a "GOONDA", as per order passed 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 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 14.02.2017. The petitioner made a representation dated 08.05.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 10.05.2017. The remarks were duly received on 29.05.2017. Thereafter, the Government considered the matter and passed the order rejecting the representation on 15.06.2017.

6. It is the contention of the petitioner that there was a delay of 19 days in submitting the remarks by the Detaining Authority, of which 6 days were Government Holidays and hence there was an inordinate delay of 13 days in submitting the remarks. Thereafter, there was another delay of 16 days in considering the representation, of which 4 days were Government Holidays, hence, there was another inordinate delay of 12 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



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.

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10. In the subject case, admittedly, there is an inordinate and unexplained delay of 13 days in submitting the remarks by the Detaining Authority and 12 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 P.D.No.08/2017, dated 14.02.2017 is quashed. The detenu, namely, Vignesh @ Vigneswaran, Son of Thangaraj, aged about 20 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(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent,
District Jail Cum Borstal School,
Pudukkottai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Vsn

RL/5C/3P/GT/SAR1/28/8/2017

ORDER MADE IN

H.C.P (MD) No.690 of 2017

Dated : 16.08.2017