



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

CORAM:

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

H.C.P.(MD) No.729 of 2017

D.Sumathi

... Petitioner

-vs-

1. State Rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The District Collector / District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Inspector of Police,
Tenkasi Police Station,
Tenkasi, Tirunelveli District.
- 4.The Superintendent,
Borstal School,
District Jail,
Pudukkottai.

... 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 M.H.S.Confdl No. 29/2017 dated 02.03.2017 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 Arumugam, son of Duraisamy, aged 19 years, herein who has been termed as "GOONDA" and now confined in Borstal School, Pudukkottai and set aside the same and set the detenu at liberty.

For Petitioner : Mr.P.Singaravel

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 is the mother of the detenu, namely, Arumugam, son of Duraisamy, male, aged about 19 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl No.29/2017 dated 02.03.2017, 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 appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

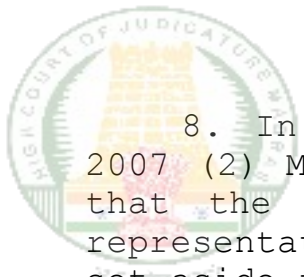
3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, 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 02.03.2017. The petitioner made a representation, dated 18.03.2017 and the same was received on 28.03.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on Nil and the remarks were duly received on 28.03.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.05.2017.

6. It is the contention of the petitioner that there was no delay in submitting the remarks by the Detaining Authority. Thereafter, there was another delay of 56 days in considering the representation, of which 18 days were Government Holidays, hence, there was another inordinate delay of 38 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.

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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 no delay in submitting the remarks by the Detaining Authority and 38 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 M.H.S.Confdl No. 29/2017 dated 02.03.2017, passed by the second respondent is set aside. The detenu, namely, Arumugam, son of Duraisamy, male, aged 19 years, is directed to be released forthwith unless his detention is required 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-9.
 2. The District Collector / District Magistrate,
Tirunelveli District, Tirunelveli.
 3. The Inspector of Police, Tenkasi Police Station,
Tenkasi, Tirunelveli District.
 4. The Superintendent, Borstal School, District Jail,
Pudukkottai.
 5. The Joint Secretary to Government,
Public (Law and Order), Secretariat, Chennai
 6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +One cc to Mr. Singaravel, Advocate, SR.No.77038

cp/ns

RL/8c/3p/SV/MMS/SAR1/21/9/2017

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