



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P. (MD) No.1199 of 2016

Rajesh

... Petitioner

-VS-

1.State of Tamil Nadu
rep.by the Secretary to Government
Home, Prohibition and Excise Department
Fort. St.George, Chennai-600 009

2.The District Collector and District Magistrate
Kanniyakumari District at Nagercoil, Nagercoil

3.The Superintendent of Prison
Central Prison, Palayamkottai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order passed in P.D.No.53/2016, dated 18.08.2016, on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Kumar, S/o.Rajalingam, aged about 39 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

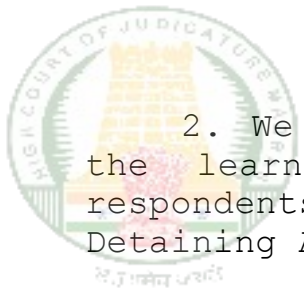
For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.C.Ramesh, Addl. Public Prosecutor

O R D E R

[Order of the Court by **T.S.SIVAGNANAM, J.**]

The petitioner is the brother-in-law of the detenu, namely, Kumar, S/o.Rajalingam, aged about 39 years. The detenu has been detained by the second respondent by his order in P.D.No.53/2016, dated 18.08.2016, 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 18.08.2016. The petitioner made a representation on 26.08.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.09.2016. The remarks were duly received on 26.10.2016. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 25.11.2016.

6. It is the contention of the petitioner that there was a delay of 49 days in submitting the remarks by the Detaining Authority, of which 17 days were Government Holidays and hence there was an inordinate delay of 32 days in submitting the remarks. Thereafter, there was another delay of 30 days in considering the representation, of which 08 days were Government Holidays, hence, there was another inordinate delay of 22 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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 32 days in submitting the remarks by the Detaining Authority and 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 P.D.No.53/2016, dated 18.08.2016, passed by the second respondent is set aside. The detenu, namely, Kumar, son of Rajalingam, aged about 39 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law & Order),
Fort. Saint George, Chennai-9.

KRK

PSM/JC/SAR3/10.04.2017/3P/6C

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