



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.1255 of 2016

Shenbagavalli

... Petitioner

-vs-

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

2.The District Magistrate and
District Collector
O/o.The District Magistrate and
District Collector
Pudukkottai District
Pudukkottai

3.The Superintendent
Central Prison
Tiruchirappalli

... 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 in detention order passed in P.D.O.No.14/2016, dated 08.09.2016, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband, namely, Deva @ Balakumar, son of Govindaraj, male, aged 48 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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 wife of the detenu, namely, Deva @ Balakumar, son of Govindaraj, aged 48 years. The detenu has been detained by the second respondent by his order in P.D.O.No.14/2016, dated 08.09.2016 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.

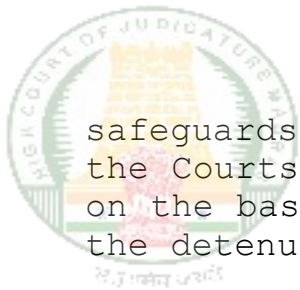
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his arguments on the grounds that there is a delay in considering the petitioner's representation and there is non-application of mind in passing the impugned detention order, which would vitiate the detention.

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 08.09.2016. The petitioner made a representation on 15.09.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.09.2016. The remarks were duly received on 04.10.2016. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 13.10.2016.

6. It is the contention of the petitioner that there was a delay of 15 days in submitting the remarks by the Detaining Authority, of which 04 days were Government Holidays and hence there was an inordinate delay of 11 days in submitting the remarks. Thereafter, there was another delay of 09 days in considering the representation, of which 04 days were Government Holidays, hence, there was another inordinate delay of 05 days in considering the representation.



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.

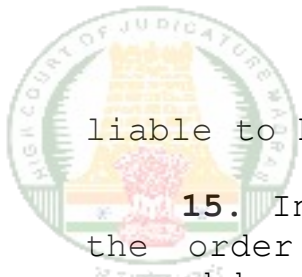
10. In the subject case, admittedly, there is an inordinate and unexplained delay of 11 days in submitting the remarks by the Detaining Authority and 05 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. The other ground on which the impugned order of detention is put under challenge is non-application of mind.

12. The learned counsel for the petitioner drawn the attention of this Court to the affidavit filed by the Sponsoring Authority, more particularly, Paragraph No.3 at Page No.8 of the impugned order, wherein it is stated that the detenu has filed a bail application in Aranthangi Police Station Crime No.354 of 2016, before the learned Judicial Magistrate, Aranthangi, vide C.M.P.No.4927 of 2016, on 01.09.2016 and the same is pending. But, his relatives are taking steps to release the detenu on bail. However, there is no supportive material for such a statement in the booklet furnished to the detenu.

13. The learned Additional Public Prosecutor is unable to point out from the annexure to the counter affidavit as to on what basis, the Sponsoring Authority has made such a statement.

14. In **T.Chitra vs. State of Tamil Nadu**, reported in (2014) 2 MLJ (Cr1) 72, this Court considered a similar issue and held that when there is no material information that the relatives of the detenu are taking steps to move another bail application to take the detenu on bail, the subjective satisfaction arrived at by the Detaining Authority is vitiated in law and on that ground the impugned order of detention therein was quashed. The reasons given in the said decision are fully and equally applicable to the present case on hand. Thus, taking note of the above two grounds, the impugned order of detention passed by the second respondent is



liable to be quashed.

15. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.O.No.14/2016, dated 08.09.2016, passed by the second respondent is set aside. The detenu, namely, Deva @ Balakumar, son of Govindaraj, aged 48 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The District Magistrate and
District Collector,
O/o.The District Magistrate and
District Collector,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government
Public(Law and Order)
Fort St.George, Chennai-9.

+1cc to M/s. K.A.S.PRABHU Advocate in SR. No.17494
KRK
JS/RR/SAR.2/7/04/2017/4P-7C

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