



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2017

CORAM:

WEB COPY

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

H.C.P (MD) No.1532 of 2016

Paramasivan

... Petitioner

Vs.

1. The Commissioner of Police,
A.R.Line Road, Koripallam,
Palayamkkottai, Tirunelveli City,
Tirunelveli.
2. The Government of Tamilnadu,
Rep by its Principal Secretary (Home)
Prohibition and Excise Department,
Fort St.George,
Chennai-9.
3. The State represented by
The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
4. The Superintendent of Prison,
Central Prison,
Palayamkottai.

... Respondents

PRAYER: Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records relating to the impugned detention order passed by the first respondent in his proceedings No.29/BCDFGISSSV/2016 dated 01.11.2016 and quash the same and consequently set the detinue namely Sankar @ Sankarapandian, S/o. Paramasivan, aged about 28/16 years now confined at Central Prison, Palaymakottai at liberty.

For Petitioner
For Respondents

: Mr.B.Prahalad Ravi
: Mr.C.Ramesh
Additional Public Prosecutor

O R D E R

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

WEB COPY The petitioner is the father of the detenu Sankar @ Sankarapandian aged about 28 years. The detenu has been detained by the first respondent by his order in No.29/BCDFGISSSV/2016 dated 01.11.2016, holding him to be a "Drug offender", as contemplated under Section 2(e) 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 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 01.11.2016. The petitioner made a representation dated 03.11.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 15.11.2016. The remarks were duly received on 15.11.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 22.12.2016.

6. It is the contention of the petitioner that there was a delay of nil days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 24 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. The 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**, [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**, [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.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of nil days in submitting the remarks by the Detaining Authority and 24 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the first respondent, in his proceedings in No.29/BCDFGISSSV/2016 dated 01.11.2016 is quashed. The detenu, namely, Sankar @ Sankarapandian is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition.

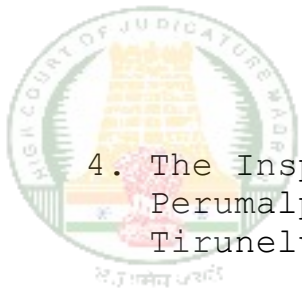
Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.
2. The Commissioner of Police,
A.R.Line Road, Koripallam,
Palayamkkottai, Tirunelveli City,
Tirunelveli.
3. The Joint Secretary to Government of Tamil Nadu
Public (Law & Order),
Fort St.George,
Chennai-9.



4. The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
5. The Superintendent of Prison,
Central Prison,
Palayamkottai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

AKV

TE/JC/SAR-II : 28/04/2017 : 4P/7C

H.C.P (MD) No.1532 of 2016
12.04.2017