



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P (MD) No.1574 of 2016

WEB COPY

A.Hari Gopalakrishnan @ Hari Nadar

: Petitioner

Vs.

1.State represented by

The District Collector and

District Magistrate,

Tirunelveli District, Tirunelveli.

2.The Principal Secretary to Government,

Home Prohibition and Excise (xiv) Department,

Secretariat, Chennai-600 009.

3.The State represented by

Superintendent of Prison,

Central Prison,

Palayamkottai,

Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for records from the first respondent in M.H.S.Confdl.No.158/2016, dated 03.11.2016 by setting aside the order of detention passed by the first respondent and setting the petitioner (Hari Gopalakrishnan @ Hari Nadar, aged 36 years, S/o.Arunachala Nadar) at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.C.Ramesh

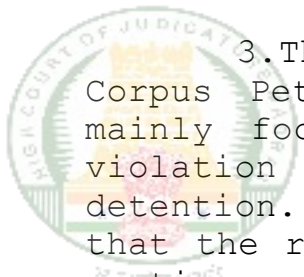
Additional Public Prosecutor.

O R D E R

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

The petitioner is the detenu - A.Hari Gopalakrishnan @ Hari Nadar, aged about 36 years. The detenu has been detained by the first respondent by his order in M.H.S.Confdl No.158/2016, dated 03.11.2016, 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 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.

WEB COPY

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 03.11.2016. The petitioner made a representation dated 09.11.2016. Thereafter, remarks were called for by the Government from the Detaining Authority on 18.11.2016. The remarks were duly received on 23.11.2016. Thereafter, the Government considered the matter and passed the order rejecting the representation on 22.12.2016.

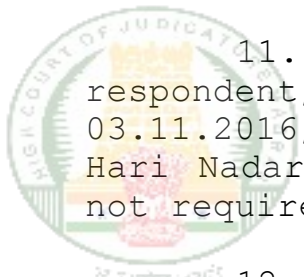
6. It is the contention of the petitioner that there was a delay of 3 days in submitting the remarks by the Detaining Authority and thereafter, there was again a delay of 18 days in considering the representation.

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 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 3 days in submitting the remarks by the Detaining Authority and 18 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 M.H.S.Confdl No.158/2016, dated 03.11.2016, is quashed. The detenu, namely, Hari Gopalakrishnan @ Hari Nadar, 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.

WEB COPY

Sd/-
Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
 2. The Principal Secretary to Government,
Home Prohibition and Excise (xiv) Department,
Secretariat, Chennai-600 009.
 3. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli District.
 4. The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order) Department,
Fort St.George, Chennai-9.
 5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1 cc to Mr.K.Prabu, Advocate, SR.No.52355

ORDER MADE IN
H.C.P (MD) No.1574 of 2016
Dated:17.04.2017

jikr
MKV-SKN-SAR 4/25.4.2017/3P-7C