



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

H.C.P.(MD)No.765 of 2016

Chithra

: Petitioner

Vs.

1.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

2.The State rep. by,
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

3.The Inspector of Police,
Athur Police Station,
Thoothukudi District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records in H.S.(MD) Confdl.No.20/16, dated 25.05.2016 and set aside the same and direct the respondents herein to produce the detenu Durai @ Ilanchi Durai, aged 36 years, S/o.Velusamy, who has been termed as "GOONDA" and now confined in Central Prison, Palayamkottai before this Court and set the detenu at liberty.

For Petitioner : Mr.M.Mathankumar
For Respondents : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SUBBIAH, J**]

The petitioner is the wife of the detenu viz., Durai @ Ilanchi Durai, S/o.Velusamy, aged about 36 years. The detenu has been detained, as per the order of the first respondent, dated 25.05.2016, in H.S.(MD) Confdl.No.20/16, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, she has come up with 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 carefully.

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 violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon'ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 25.05.2016. As against the same, the petitioner made a representation on 07.06.2016. The remarks were called for by the Government from the Detaining Authority on 13.06.2016. The remarks were received on 18.07.2016. Thereafter, the Government considered the issue and passed the order rejecting the representation on 21.07.2016. It is the contention of the petitioner that there was delay of 25 days in submitting the remarks by the Detaining Authority and there was delay of 1 day on the part of the Government in considering the same.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon'ble Supreme Court has further 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 of the detenu.

9. In **Sumaiya Vs. The Secretary to Government**, [2007 (2) MWN (Cr.) 1451], 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/detenue would be sufficient to set aside the detention order.

10. 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 detention illegal. This dictum has been followed in several Judgments consistently by the Hon'ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 26 working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the first respondent, in his proceedings in H.S.(MD) Confdl.No.20/16, dated 25.05.2016, is quashed. The detenu, namely Durai @ Ilanchi Durai, S/o.Velusamy, aged about 36 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.

2.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

3.The Inspector of Police,
Athur Police Station, Thoothukudi District.

4.The Superintendent of Central Prison, Palayamkottai.

5.The Joint Secretary to Government,
Public (Law & Order), Fort St., George, Chennai-9.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SML

CSL/SV-MMS/20.02.2017 : 3P/7C

Order made in
H.C.P. (MD) No.765 of 2016

Dated: **09.02.2017**

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