

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2299 of 2017

Murugesan

... Petitioner

-Vs-

1. State of Tamil Nadu, represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.

2.The District Magistrate and
District Collector
Office of the District Magistrate
and District Collector
Tiruvallur District, Tiruvallur

... Respondents

(R2 amended as per order dated 28.02.2019
in CrI.M.P. 3209/2018 in H.C.P.No.2299 of 2017)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in Memo No.43/BCDFGISSSV/2017 passed by the 2nd respondent on 17.11.2017, set aside the same and direct the respondents to produce the detenu Murugesan, Son of Velayutham, aged about 26 years, presently confined in the Central Prison, Puzhal-II, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.J.Stalin
For Respondents: Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the detenu herein, viz., Murugesan, son of Velayutham, aged 26 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.43/2017, dated 17.11.2017, holding him to

be a "GOONDA", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. The detenu has come to adverse notice in the following cases:-

S.No.	Cr.No. & Police Station	Offences
1.	Cr.No.1406/2014 Redhills Police Station, Chennai City Police	147, 148 & 302 IPC

The ground case has been registered against the detenu in Cr.No.521/2017 on the file of Sholavaram Police Station for offences u/s 147, 148, 452, 302 IPC. The detention order has been passed by second respondent in B.C.D.F.G.I.S.S.S.V.No.43/2017 on 17.11.2017.

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

4. 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.

5. 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.

6. The Detention Order in question was passed on 17.11.2017. The petitioner made a representation, dated 30.11.2017 and the same was received on 01.12.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.12.2017. The remarks were duly received on the same day. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.12.2017.

7. It is the contention of the petitioner that there was an inordinate delay of 5 days in considering the representation, of which 2 days were Saturday and Sunday, hence, there was an inordinate delay of 3 days in considering the representation.

8. 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.

9. 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.

10. 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.

11. In the subject case, admittedly, there is an inordinate and unexplained delay of 3 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.V.No.43/2017, dated 17.11.2017, passed by the second respondent is set aside. The detenu, namely, Murugesan, son of Velayutham, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1.The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George, Chennai-600 009.

3.The District Magistrate and
District Collector
Office of the District Magistrate
and District Collector
Tiruvallur District, Tiruvallur

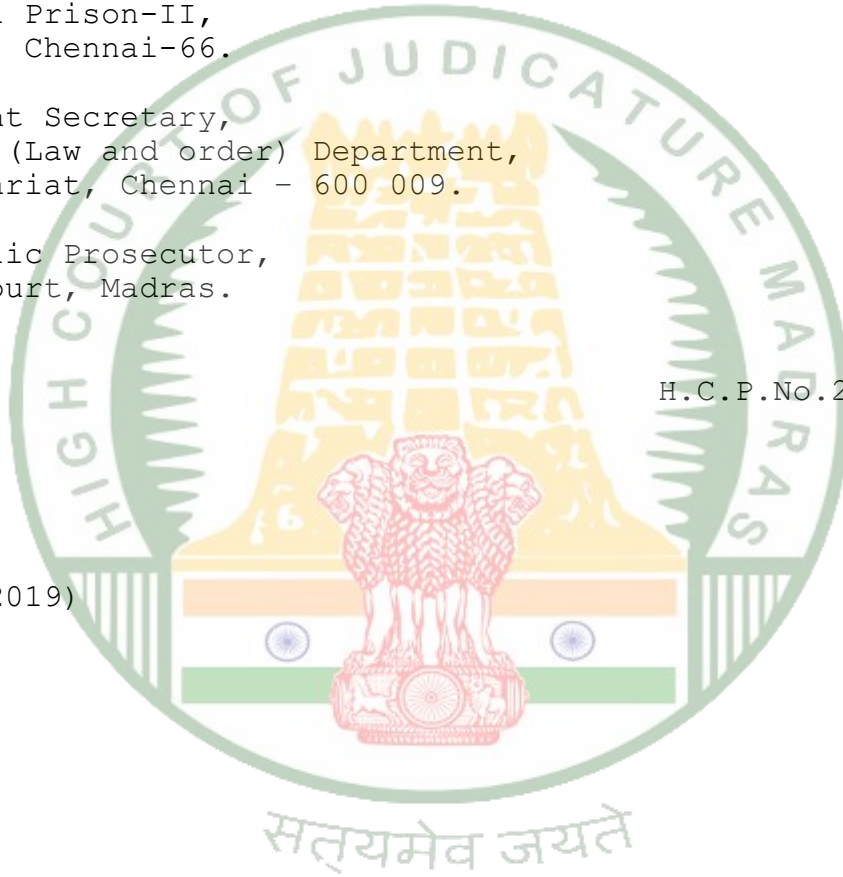
3.The Superintendent,
Central Prison-II,
Puzhal, Chennai-66.

4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2299 of 2017

SS(CO)
SP(23/07/2019)



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