

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2018

Coram

THE HON'BLE MR.JUSTICE C.T.SELVAM
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2311 of 2017

E.Anjur Ammal ... Petitioner/Mother of Detenue
Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary to the Government
Home Prohibition and Excise Dept.
Fort St. George
Chennai 600 009.
- 2.The District Collector & District Magistrate
Kancheepuram District
Kancheepuram ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records to the impugned order of detention passed by the 2nd respondent in Memo No.BCDFGISSSV No.98/2017 dated 31.10.2017 and set aside same and consequently direct the respondents to produce the detenu Purushothaman, son of Elumalai, petitioner's son now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Dhurvasan

For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

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O R D E R
(Order of the Court was made by N.SATHISH KUMAR, J.)

The petitioner is the mother of the detenu, namely, Purushothaman, S/o.Elumalai, male, aged about 26 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.98/2017 dated 31.10.2017 holding him to be a "Sand Offender", as contemplated under Section 2(gg) 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 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 with regard to the same.

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 31.10.2017. The petitioner made a representation dated 07.11.2017 and the same was received on 13.11.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day i.e., on 13.11.2017. The remarks were duly received on 15.11.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation 08.12.2017.

6. It is the contention of the petitioner that there was an unexplained delay of 2 days in submitting the remarks by the Detaining Authority. Thereafter, another inordinate delay of 24 days in considering the representation, of which 6 days were Government Holidays and hence there was an inordinate delay of 18 days in considering the representation.

7. 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.

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 unexplained delay of 2 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 Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.98/2017 dated 31.10.2017, passed by the second respondent is set aside. The detenu, namely, Thiru.Purushothaman, S/o.Elumalai, male, aged about 26 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

kas/ggs

To

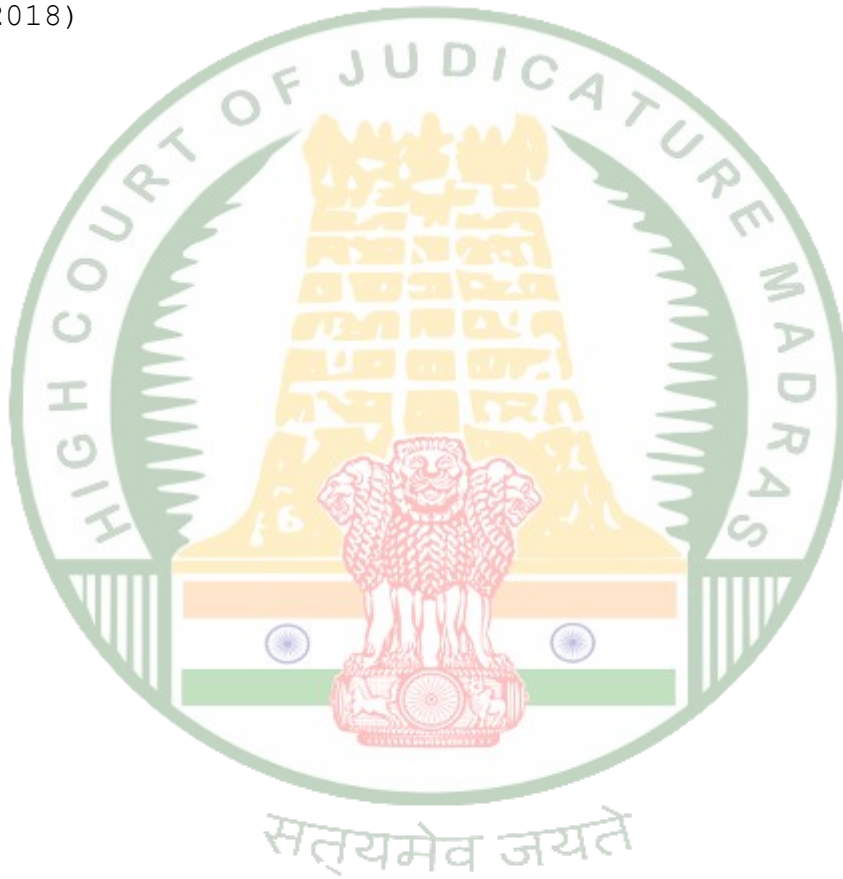
- 1.The Secretary to the Government
Home Prohibition and Excise Dept.
Fort St. George
Chennai 600 009.
- 2.The District Collector & District Magistrate
Kancheepuram District
Kancheepuram
- 3.The Joint Secretary to Government
Public Law and Order Department
Government of Tamil Nadu
Fort St. George, Chennai-9.

4.The Superintendent,
Central Prison,
Puzhal, Chennai
(In duplicate for communication to the detenu)

5.The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P.No.2311 of 2017

VGII (CO)
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