

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2348 of 2017

S.Sathish @ Sathish Kumar

Petitioner

-VS-

1.State of Tamilnadu, rep by its
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai 600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order passed in Memo No.C.No.473/BCDFGISSSV/207 dated 04.08.2017 on the file of the 2nd respondent herein, to set aside the same and direct the respondents to produce the detainee, i.e., the body of S.Sathish @ Sathish Kumar, S/o.Selvam, Male, aged about 31 years, the detainee herein now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.V.Purushothaman

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. He has been detained by the second respondent by his order in BCDFGISSSV No.473/2017, dated 04.08.2017, 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 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.

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.

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 04.08.2017. The petitioner made a representation, dated 04.05.2017 and the same was received on 25.11.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.11.2017. The remarks were duly received on 06.12.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 18.12.2017.

6 It is the contention of the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which 2 days were Saturday and Sunday and hence there was an inordinate delay of 6 days in submitting the remarks. Thereafter, there was yet another delay of 10 days in considering the representation, of which 4 days were Saturdays and Sundays,

hence, there was another inordinate delay of 6 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 inordinate and

unexplained delay of 6 days in submitting the remarks by the Detaining Authority and 6 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.473/2017, dated 04.08.2017, passed by the second respondent is set aside. The detenu, namely, S.Sathish @ Sathish Kumar, son of Selvam, aged about 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[C.T.S.,J.]

[N.S.K.,J.]

17.01.2018

Internet : Yes

AP

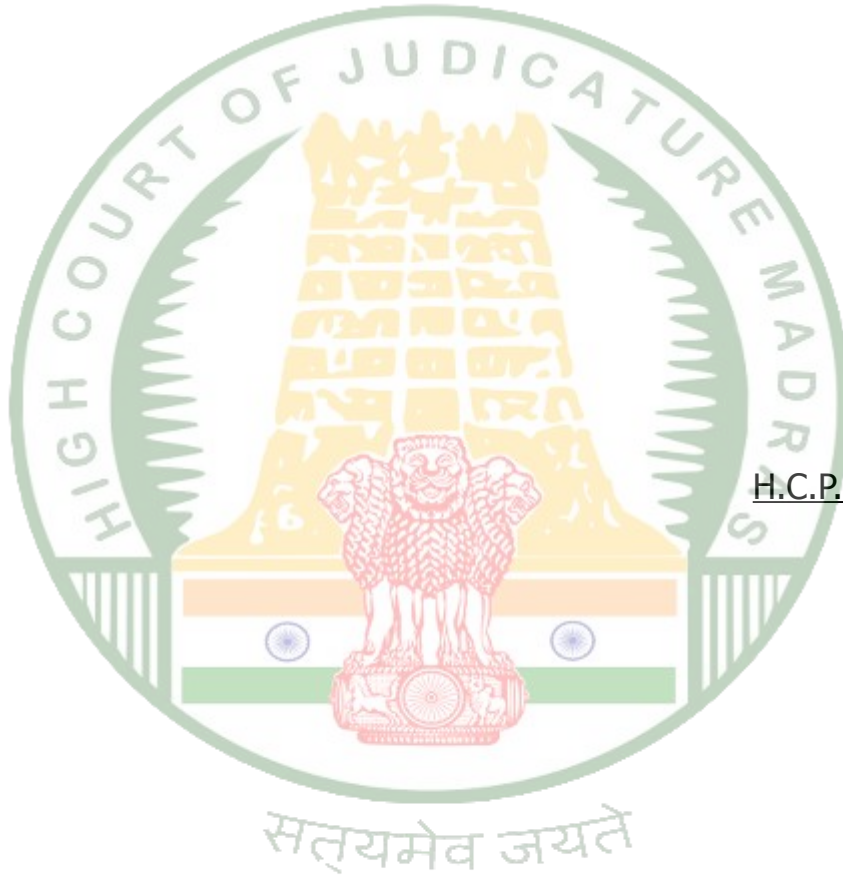
To

- 1.The Secretary to Government,
State of Tamilnadu
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai 600 007.
- 3.The Public Prosecutor,
High Court, Madras.

C.T.SELVAM, J.,

and
N.SATHISH KUMAR, J.

AP



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