

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:21.02.2018

CORAM:

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

H.C.P.No.2403 of 2017

Manikanden ... Petitioner

-Vs-

1.State of Tamil Nadu rep. by its,
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, 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 relating to detention order passed in BCDFGISSSV.No.721/2017 dated, 15/11/2017 on the file of the 2nd respondent herein and quash the same and to direct the respondents to produce the detenu Thiru.Kannan, S/o.Dharmalingam, aged 50, who is presently detained in the Central Prison-II, Puzhal, Chennai before this Hon'ble court and set at liberty.

For Petitioner : Mr.C.C.Chellappan
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 friend of the detenu herein, viz., Kannan, son of Dharmalingam, aged 50 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.721/2017, dated 15.11.2017, holding him to be a "Video Pirate", as contemplated under 2(j) 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 15.11.2017. The petitioner made a representation, dated 08.12.2017 and the same was received on 12.12.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 13.12.2017. The remarks were duly received on 24.01.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 31.01.2018.

6. It is the contention of the petitioner that there was a delay of 42 days in submitting the remarks by the Detaining Authority, of which 16 days were Saturdays and Sundays and Government Holidays and hence there was an inordinate delay of 26 days in submitting the remarks. Thereafter, there was yet another delay of 7 days in considering the representation, of which 3 days were Saturdays and Sundays and Government holidays, hence, there was another inordinate delay of 4 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 26 days in submitting the remarks by the Detaining Authority and 4 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.721/2017, dated 15.11.2017, passed by the second respondent is set aside. The detenu, namely, Kannan, son of Dharmalingam, aged about 50 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 5.The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai

GP(CO)
sm:13.3.2018

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