IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.1667 of 2018

B.Rathnakaran ... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2. The Commissioner of Police, Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Vepery, Chennai -600 007.

3. The State rep. By its
Inspector of Police, Central Crime Branch, Teax XII,
Bank Fraud Investigation Wing,
Vepery, Chennai - 600 007. ... Respondents

PRAYER:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records of the second respondent in BCDFGISSSV.No.538/2018 dated 16.07.2018 and quash the same and thereby direct the respondents to produce the son of the petitioner namely Thiru.Suresh @ Sureshkumar, S/o. Rathnakaran, aged about 45 years (Detenue) now detained at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.M.Ravikumar

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

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

The petitioner is the father of the detenu herein, viz. Suresh @ Suresh Kumar, Son of Rathnakaran, aged 45 years. The detenu has been detained by the second respondent by his order in No.538/BCDFGISSSV/2018, dated 16.07.2018, holding him to be a "GOONDA", as contemplated under Section 2(f) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (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.	Police Station & Crime No.	Section of Law
1.	J-8 Neelangarai Police Station Crime No.746/2014	420 IPC
2.	Central Crime Branch Crime No.411/2017	419, 420 & 477 IPC
3.	J-8 Neelangarai Police Station Crime No.901/2018	380, 465, 468 r/w 420 IPC

The ground case has been registered against the detenu in Cr.No.267/2018 on the file of the Central Crime Branch, for offences u/s. 380, 465, 468 r/w 420 IPC. The detention order has been passed by second respondent in No.538/BCDFGISSSV/2018 on 16.07.2018.

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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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 16.07.2018. The petitioner made a representation, dated 07.08.2018 and the same was received on 10.08.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 24.08.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.09.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 14 days in submitting the remarks by the Detaining Authority, of which 6 days were Saturdays, Sundays and Government Holiday and hence there was a delay of 8 days in submitting the remarks. Thereafter, there was yet another delay of 31 days in considering the representation, of which 10 days were Saturday, Sunday and hence there was a delay of 21 days in considering 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 8 days in submitting the remarks by the Detaining Authority and 21 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.538/BCDFGISSSV/2018, dated 16.07.2018, passed by the second respondent is set aside. The detenu, namely Suresh @ Suresh Kumar, Son of Rathnakaran, aged 45 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:

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

2. The Commissioner of Police, Greater Chennai,
   Office of the Commissioner of Police (Goondas Section),
   Vepery, Chennai -600 007.

4. The State rep. By its
   Inspector of Police, Central Crime Branch, Teax XII,
   Bank Fraud Investigation Wing,
   Vepery, Chennai - 600 007.

5. The Superintendent,
   Central Prison, Puzhal
   Chennai-66.

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

7. The Public Prosecutor,
   High Court, Madras.

WEB COPY

H.C.P.No.1667 of 2018

RJI(CO)
CS/08/01/2019

https://hcservices.ecourts.gov.in/hcservices/