

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

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

H.C.P.No.1675 of 2018

M.MukeshKumar ... Petitioner/Friend of the detenuue

... Vs ...

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

2.The Commissioner of Police,
Chennai city Police,
Greater Chennai,
Commissioner Office, 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 relating to the Impugned order in No.471/BCDFGISSSV/2018 dated 04.07.2018 on the file of Second Respondent herein and set aside the same as illegal and Direct to the Respondents to produce the detenuue Esakki Raja, Son of Vairavan, aged about 34 years, now confined at Central prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Mahaweer Shivaji

For Respondents : Mr.R.Prathap Kumar
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., Esakki Raja, son of Vairavan, aged about 34 years. The detenu has been detained by the second respondent by his order in No.471/BCDFGISSSV/2018, dated 04.07.2018, 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 case:-

S.No.	Police Station & Crime No.	Section of Law
1.	Central Crime Branch-I Crime No.96/2018	465,468,471,420,408 IPC & 66C of Information Technology Act r/w 120(B) IPC

The ground case has been registered against the detenu in Cr.No.97/2018 on the file of the Inspector of Police, Team XI, Bank Fraud Wing, Central Crime Branch, for offences under Sections 465, 468, 471, 420, 408 IPC and 66C of IT Act r/w 120(B) IPC.

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

4. Though several grounds have been raised in the Habeas Corpus Petition, learned counsel for 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. In support of his contention, learned counsel for petitioner relied on the judgment of the Hon'ble Apex Court in the case of Rajammal vs. State of Tamil Nadu, [(1999) 1 SCC 417].

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 04.07.2018. The petitioner made a representation, dated Nil and the same was received on 16.08.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.08.2018. The remarks were duly received on 31.08.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 03.10.2018 and served on the detenu on 05.10.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 10 days in submitting the remarks by the Detaining Authority, of which 3 days were Saturday and Sunday and hence there was a delay of 7 days in submitting the remarks. Thereafter, there was yet another delay of 30 days in considering the representation, of which 12 days were Saturdays, Sundays and Government Holidays and hence there was yet another delay of 18 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 7 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.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.471/BCDFGISSSV/2018 on 04.07.2018 passed by the second respondent is set aside. The detainee, namely Esakki Raja, son of Vairavan, aged about 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

jas/Jrl

To:

- 1.The Secretary to Government,
State of Tamil Nadu,
Department of Prohibition and excise(Home),
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Chennai city Police,
Greater Chennai,
Commissioner Office, Vepery,
Chennai - 600 007.
3. The Superintendent of Central prison,
Puzhal, Chennai-60
4. The Joint Secretary to Government
Public (Law & Order)
Fort St.George,
Chennai - 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1675 of 2018

GMV (14/12/2018)