

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.5 of 2018

Prabakaran @ Prabhu

... Petitioner

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 Commissioner of 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, calling for the records in Memo No.225/BCDFGISSSV/2017 passed by the 2nd respondent on 29.04.2017, set aside the same and direct the respondents to produce the detenu Prabakaran @ Prabhu, aged about 26 years, presently confined in the Central Prison, Puzhal-II, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.J.Stalin

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

O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J.)

The petitioner is the detenu, namely, Prabakaran @ Prabhu, S/o.Pethaperumal, aged about 26 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.225/2017 dated 29.04.2017, holding him to be a "Goonda", as contemplated under Section 2(f) 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 29.04.2017. The petitioner made a representation dated 30.11.2017 and the same was received on 01.12.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 01.12.2017. The remarks were duly received on 06.12.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation 18.12.2017.

6. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an unexplained delay of 3 days in submitting the remarks. Thereafter, another unexplained delay of 12 days in considering the representation, of which 2 days were Government Holidays and hence there was an unexplained delay of 10 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 3 days in submitting the remarks by the Detaining Authority and 10 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.225/2017 dated 29.04.2017, passed by the second respondent is set aside. The detenu, namely, Thiru.Prabakaran @ Prabhu, S/o.Pethaperumal, male, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

kas/ggs
To

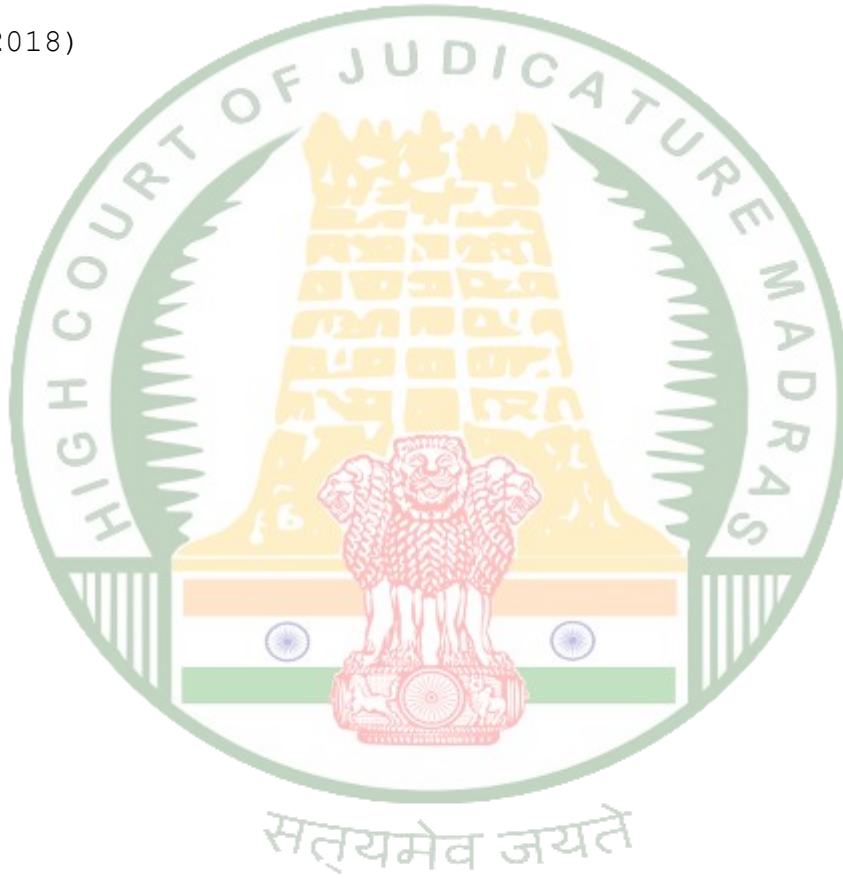
- 1.The Secretary to the Government
Home Prohibition and Excise Dept.
Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai
Commissioner Office, Vepery, Chennai 600 007
- 3.The Joint Secretary to Government,
Public Law and Order Department
Government of Tamil Nadu, Fort St. George, Chennai-9.
- 4.The Superintendent,
Central Prison,
Thiruvavur
(In duplicate for communication to the detenu)

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

+1 CC to Mr.J. Stalin, Advocate sr 7808.

H.C.P.No.5 of 2018

PA (CO)
SP (26/02/2018)



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