

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.569 of 2018

Sivaperumal ..Petitioner/Father Detenu

-Vs-

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Chief Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Magistrate and
District Collector,
Salem District, Salem. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in C.M.P.No.08/GOONDA/C2/2018 dated 14.02.2018 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu Periyasamy @ Edaiyan Periyasamy, S/o.Sivaperumal, aged about 30 years, who is now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.S.Victor Prasath

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu herein, viz., Periyasamy @ Edaiyan Periyasamy, son of Sivaperumal, aged 30 years. The detenu has been detained by the second respondent by his order in C.M.P.No.8/GOONDA/C2/2018, dated 14.02.2018, 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. The detenu has come to adverse notice in the following cases:-

S.No.	Cr.No. & Police Station	Offences
1.	Cr.No.575/2017 Ethappur Police Station	379 IPC
2.	Cr.No.49/2017 Karumandurai Police Station	379 IPC (NP)
3.	Cr.No.499/2017 Ethappur Police Station	392 IPC
4.	Cr.No.95/2017 Karumandurai Police Station	379 IPC
5.	Cr.No.568/2017 Ethappur Police Station	379 IPC

The ground case has been registered against the detenu in Cr.No.570/2017 on the file of Ethappur Police Station for offences u/s 392 IPC. The detention order has been passed by second respondent in C.M.P.No.8/GOONDA/C2/2018 on 14.02.2018.

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 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 14.02.2018. The petitioner made a representation, dated 28.02.2018 and the same was received on 15.03.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on the same day. The remarks were duly received on 19.04.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.05.2018.

7. It is the contention of the petitioner that there was an inordinate delay of 34 days in submitting the remarks by the Detaining Authority, of which 12 days were Saturdays

and Sundays and Government holidays, hence, there was another inordinate delay of 22 days in submitting the remarks. Thereafter, there was yet another delay of 26 days in considering the representation, of which 9 days were Saturdays and Sundays and Government holidays, hence, there was another inordinate delay of 17 days in considering the 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 22 days in submitting the remarks by the Detaining Authority and 17 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 C.M.P.No.8/GOONDA/C2/2018, dated 14.02.2018, passed by the second respondent is set aside. The detenu, namely, Periyasamy @ Edaiyan Periyasamy, son of Sivaperumal, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-

Assistant Registrar(CS)

//True Copy//

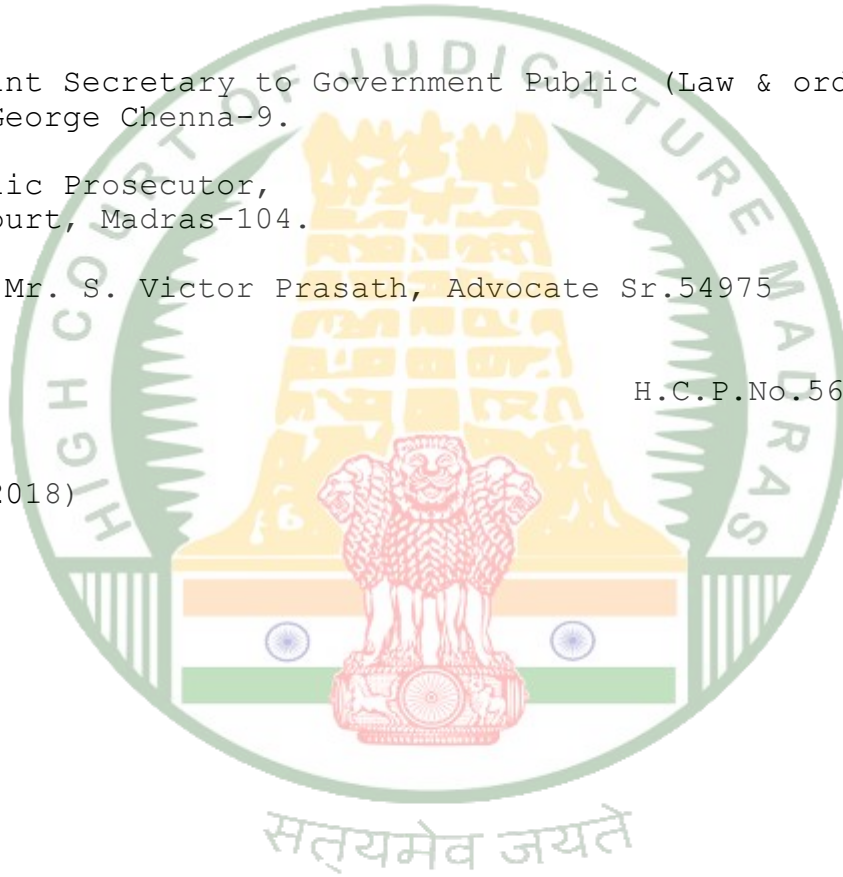
Sub Assistant Registrar

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Chief Secretariat, Fort St.George, Chennai-600 009.
 - 2.The District Magistrate and District Collector,
Salem District, Salem.
 - 3.The Superintendent,
Central Prison,
Salem.
 4. The Joint Secretary to Government Public (Law & order)
Fort St. George Chenna-9.
 - 5.The Public Prosecutor,
High Court, Madras-104.
- + 1 cc to Mr. S. Victor Prasath, Advocate Sr.54975

H.C.P.No.569 of 2018

VGII (CO)
EU (03/09/2018)



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