

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.1874 of 2018

Chokkalingam ... Petitioner/Father of the detenu

... Vs ...

1.The Additional Chief Secretary to Government,
Prohibition and Excise Department,
Secretariat,
Chennai - 600 057.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery,
Chennai - 600 007.

3.The Inspector of Police,
Chit and Kandhuvatti, Fake Passport Wing,
Team - 32,
Central Crime Branch,
Chennai.

...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 connection with the detention order passed by the 2nd respondent in order No. 691 of 2018 No. 691BCDFGISSSV/2018 dated 11.08.2018 against the petitioner's son Sivaraman the detenu herein now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the Sivaraman, Son of Chokkalingam, before this Court and set him at liberty.

For Petitioner : Mr.R.C.Paul Kanagaraj

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 father of the detenu herein, viz., Sivaraman, son of Chockalingam, aged about 42 years. The detenu has been detained by the second respondent by his order in No.691/BCDFGISSSV/2018, dated 11.08.2018, 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 Crime No. 39/2018	12(1)(b) Passport Act 1967 r/w 420, 468, 471 IPC
2.	Central Crime Branch Crime No. 68/2018	12(1)(b) Passport Act 1967 r/w 420, 468, 471 IPC

The ground case has been registered against the detenu in Cr.No.269/2018 on the file of the Central Crime Branch, for offences under Sections 12(1)(b), 12(2) of Passport Act 1967 r/w 420, 468 and 471 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 11.08.2018. The petitioner made a representation, dated 23.08.2018 and the same was received on 24.08.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.08.2018. The remarks were duly received on 30.08.2018. 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 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Saturday and Sunday and hence there was a delay of 5 days in submitting the remarks. Thereafter, there was yet another delay of 34 days in considering the representation, of which 13 days were Saturdays, Sundays and Government Holidays and hence there was yet another 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 5 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.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.691BCDFGISSSV/2018 , dated 11.08.2018 passed by the second respondent is set aside. The detenu, namely Sivaraman, son of Chockalingam, aged about 42 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

Jrl
To:

1. The Additional Chief Secretary to Government,
Prohibition and Excise Department,
Secretariat, Chennai - 600 057.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
3. The Inspector of Police,
Chit and Kandhuvatti, Fake Passport Wing,
Team - 32, Central Crime Branch,
Chennai.
4. The Joint Secretary o Government
Public (Law & Order)
Fort St George, Chennai-9.
5. The Superintendent of Central Prison,
Puzhil, Chennai-66.
6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1874 of 2018

GMV (14/12/2018)