



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.100 of 2018

Archana

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600009.
2. The Commissioner of Police,
Tiruchirapalli City, Tiruchirapalli.
3. The Inspector of Police,
Fort Police Station, Tiruchirapalli City.
4. The Superintendent of Prison,
Central Prison, Tiruchirapalli City. ... Respondents

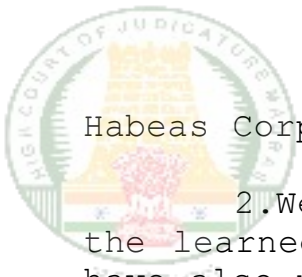
PRAYER: The petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to direct the respondents to produce person or body of the detenu namely "Selvam @ Vallarasu" aged about 29 years son of Christiraj before this Court who is now detained in the Central prison, Trichy in pursuant to the detention order passed by the second respondent in C.No.02/Detention/C.P.O/T.C./2018 dated 09.01.2018 and to call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner	: Mr.N.Mohideen Basha
For Respondents	: Mr.V.Neela Kandan
	Additional Public Prosecutor

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

The petitioner is the detenu, viz., Selvam @ Vallarasu, son of Christiraj, aged about 29 years. The detenu has been detained by order in C.No.02/Detention/C.P.O/T.C/2018, dated 09.01.2018, 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. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor 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 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.

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 09.01.2018. The petitioner made a representation dated 23.01.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 25.01.2018. The remarks were duly received on 02.02.2018. Thereafter, the Government considered the matter and passed the order rejecting the representation on 07.02.2018.

6. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority.

7. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble 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**, [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**, [1980 (2) SCC 321], the Hon'ble 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 inordinate and unexplained delay in submitting the remarks by the Detaining Authority. The impugned detention order is, therefore, liable to be quashed.

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11. In the result, the Detention Order, passed by the second respondent, in his proceedings in C.No.02/Detention/C.P.O/T.C/2018, dated 09.01.2018, is quashed. The detenu, namely, Selvam @ Vallarasu, S/o.Christiraj, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600009.
2. The Commissioner of Police,
Tiruchirapalli City, Tiruchirapalli.
3. The Inspector of Police,
Fort Police Station, Tiruchirapalli City.
4. The Superintendent of Prison,
Central Prison, Tiruchirapalli City.
5. The Joint Secretary to Government,
Public (Law & order) Department,
Fort St.George, Chennai -9.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.N.Mohideen Basha , Advocate in SR No. 59830

cp/nbj

AE/SKN RSK/SAR4/23.04.2018/3P/8C