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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
H.C.P.(MD) No.975 of 2018

Pitchai @ Pitchai Muthu

... Petitioner

-vs-

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Chairman,
Advisory Board,
No.32, Rajaji Road,
Singaravelar Maligai Ground Floor, [Back side entrance],
Chennai Collectorate Complex,
Chennai - 600 001.

3.The District Collector and District Magistrate,
Sivagangai District,
Sivagangai.

4.The Inspector of Police,
Palayanoor Police Station,
Sivagangai District.

5.The Superintendent of Prison,
Central Prison, Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the detenu AKKINI @ AKKINIRAJ, aged about 22 years, who has been termed as "GOONDA" and detained in the 5th respondent's prison and to call for the entire records relating to the detention order in Cr.M.P.No.16/Goonda/2018, dated 15.06.2018, passed by the 3rd respondent herein and to set aside the same and to set the detenu at liberty.

For Petitioner : Mr.M.S.Jeyakarthik

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the father of the detenu, namely, Akkini @ Akkiniraj. The detenu has been detained by the third respondent by his order in Cr.M.P.No.16/Goonda/2018, dated 15.06.2018. 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. The learned Counsel for the petitioner would submit that for the other co-accused, detention orders have been quashed. In the ground case, the petitioner has been arrayed as 17th accused. The learned counsel appearing for the petitioner would further submit 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.

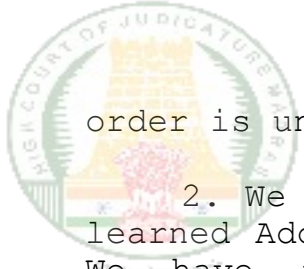
4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been 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 15.06.2018. The petitioner made a representation on 04.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 10.07.2018. The remarks were duly received on 20.07.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.07.2018.

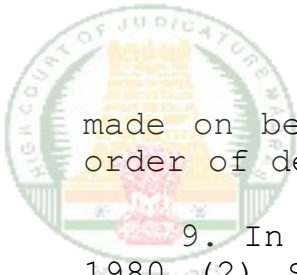
6. It is the contention of the petitioner that there was a delay of 10 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. Thereafter, there was another delay of 7 days in considering the representation, of which 2 days were Government Holidays, hence, there was another inordinate delay of 5 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) MN (Cr.) 145, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation



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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 inordinate and unexplained delay of 8 days in submitting the remarks by the Detaining Authority and 5 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 Cr.M.P.No.16/Goonda/2018, dated 15.06.2018, passed by the third respondent is set aside. The detenu, namely, Akkini @ Akkiniraj, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar (CS-I)

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Chairman,
Advisory Board,
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- 3.The District Collector and District Magistrate,
Sivagangai District,
Sivagangai.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai-09.
- 5.The Inspector of Police,
Palayanoor Police Station,
Sivagangai District.
- 6.The Superintendent of Prison,
Central Prison, Madurai.



7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.S.Jeyakarthik, Advocate, SR.No. 82180

H.C.P. (MD) No.975 of 2018
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