

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.58 of 2019

Senthilkumar ... Petitioner

Versus

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Cuddalore District, Cuddalore. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records, relating to the petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 14.12.2018 on the file of the second respondent herein made in proceedings No.C3/D.O/76/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely ARIVAZHAGAN, s/o.Punniyamoorthi, aged 29 years before this Court and set the petitioner's brother at liberty from detention and now the petitioner's brother detained at Central Prison, Cuddalore.

For Petitioner : Mr.C.Gopinath

For Respondents: Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

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

The petitioner is the brother of Arivazhagan, s/o.Punniyamoorthi, aged 29 years, who is the detenu. The detenu has been detained by the second respondent by his order in No.C3/D.O/76/2018, dated 14.12.2018 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 appearing 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.

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 14.12.2018. The petitioner made a representation on 04.01.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.01.2019. The remarks were duly received on 12.02.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.02.2019.

6. It is the contention of the petitioner that there was a delay of 20 days in calling the remarks by the Detaining Authority, of which 10 days were Government Holidays and hence there was an inordinate delay of 10 days in submitting the remarks.

7. In *Rekha vs. State of Tamil Nadu* (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* (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 inordinate and unexplained delay of 10 days in submitting the remarks by the Detaining Authority. 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 No.C3/D.O/76/2018, dated 14.12.2018, passed by the second respondent is set aside. The detenu, namely, Arivazhagan, S/o.Punniyamoorthi, aged 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai-9.
- 2.The District Collector and District Magistrate,
Cuddalore District, Cuddalore.
3. The Superintendent, Central Prison, Cuddalore.
4. The Joint Secretary to Government Public
Law & Order), Fort St.George, Chennai-9.
- 5.The Public Prosecutor, High Court, Madras.

+1cc to Mr.C.Gopinath, Advocate SR.No.45443

HCP.No.58 of 2019

SKV(CO)

GMV(11/07/2019)