

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.239 of 2019

Tamilarasan

..Petitioner

Vs

1. State of Tamil Nadu
Rep.by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate,
Kancheepuram District.
Kancheepuram.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the entire records, relating to petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order dated 04.01.2019 on the file of the second respondent herein made in proceedings B.C.D.F.G.I.S.S.S.V.No.1/2019 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's brother namely Karthi, son of Devaraj, aged 30 years before this Court and set the petitioner's brother at liberty from detention, now petitioner's brother detained at Central Prison, Puzhal, Chennai-600 066.

For Petitioner .. Mr.C.C.Chellappan
For Respondents.. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the brother of Karthi, son of Devaraj, aged 30 years, who is the detenu. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No.1/2019 dated 04.01.2019, 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. A perusal of the proforma produced by the learned Additional Public Prosecutor would show that in respect of first representation dated 24.01.2019, which was received on 29.01.2019 and remarks were called for on the same day but the remarks were received on 05.02.2019. Thus there was a delay of 7 days, of which, two days were Government holidays. The second representation dated 04.02.2019 was received on 14.02.2019 and though remarks were called for on the same day, remarks were received on 20.02.2019. Thus, there was a delay of 6 days of which 2 days were Government holidays.

6. It is the contention of the petitioner that the remarks were received on 20.02.2019 and there was delay of 69 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which 23 days were Government Holidays, hence, there was inordinate delay of 46 days in considering the representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 02.05.2019.

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, reported in 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 of 46 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department. 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 B.C.D.F.G.I.S.S.V.No.1/2019 dated 04.01.2019 passed by the second respondent is set aside. The detenu, namely, Karthi, son of Devaraj, aged 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate,
Kancheepuram District.
Kancheepuram.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government
Public (Law and order)
Fort. St. George, Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.239 of 2019

BP(CO)
SP(11/07/2019)



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