

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

Coram

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

H.C.P.No.408 of 2019

Kunjayee @ Deva

..Petitioner

Vs

1.The Commissioner of Police,
Salem City

2.The Secretary to the Govt,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus to call for the records in connection with the order of detention passed by the first respondent dated 21.8.2018 in C.M.P.No.50/Goonda/Salem City/2018, against the petitioner Kunjayee @ Deva, Son of Perumal, who is confined at Central Prison, Salem, and set aside the same and direct the 1st respondent to produce the detenu before Hon'ble Court and set him at liberty.

For Petitioner .. Mr.A.K.Manoj Kumar

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

ORDER

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

The petitioner Kunjayee @ Deva, Son of Perumal, aged 22 years, is the detenu. The detenu has been detained by the first respondent by his order in C.M.P.No.50/Goonda/Salem City/2018 dated 21.08.2018, holding 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 representation dated 12.02.2019, which was received on 14.2.2019 and remarks were called for on the same day but the remarks were received on 21.02.2019. Thus there was a delay of 7 days, of which, 2 days were Government holidays.

6. It is the contention of the petitioner that the remarks were received on 21.02.2019 and there was delay of 68 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 45 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 5 days in submitting the remarks and 45 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 C.M.P.No.50/Goonda/Salem City/2018 dated 21.08.2018 passed by the first respondent is set aside. The detenu, namely, Kunjayee @ Deva, Son of Perumal, aged 22 years,, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi/ssm

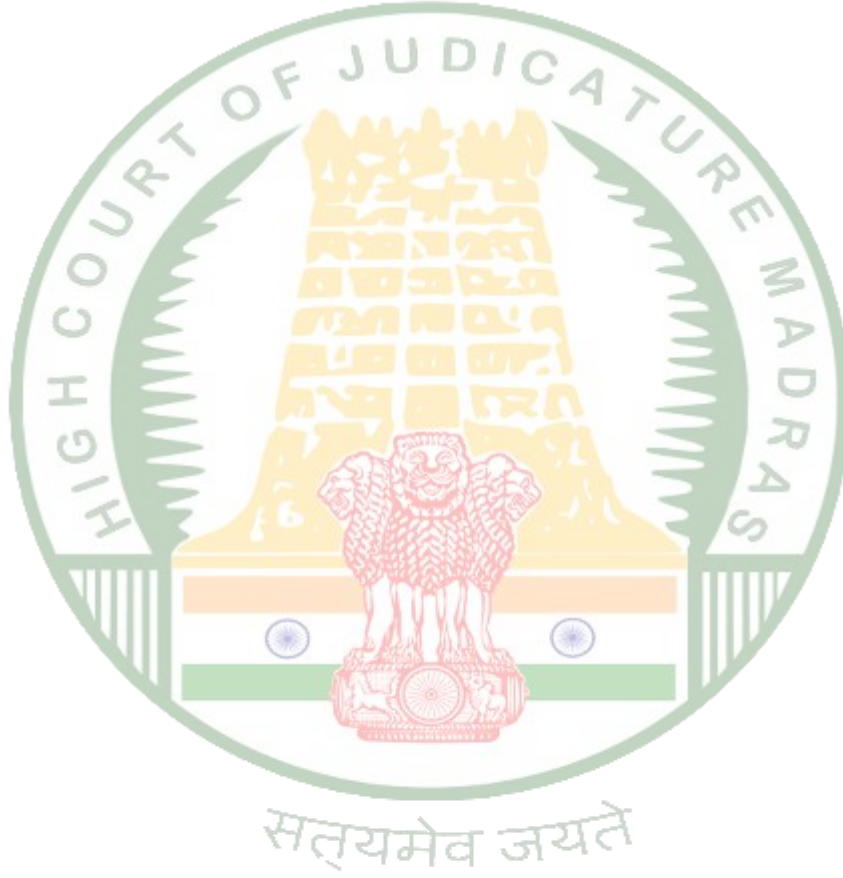
To

1. The Commissioner of Police,
Salem City
- 2.The Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 3.The Superintendent,
Central Prison,Salem.
- 4.The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Government,
Public (Law & Order), Fort St.George, Chennai-9

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