



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.468 of 2019

L.Srinivasan

..Petitioner

Vs

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

2.The State of Tamil Nadu,
Rep. By the Commissioner of Police,
Greater Chennai,
O/o of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 07

..Respondents

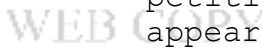
Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus to call for the entire records relating to the impugned order of detention passed by the 2nd respondent in Memo No.1079/BCDFGISSSV/2018 dated 27.11.2018 and set aside the same and consequently direct the respondents to produce the detenu Arunkumar @ Kendai Arun, petitioner's son now confined at Central Prison, Puzhal before this Hon'ble Court and set him at liberty.

For Petitioner .. Mr.P.Thiyagaraj
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 father of Arunkumar @ Kendai Arun, son of Doss, aged about 26 years, who is the detenu. The detenu has been detained by the second respondent by his order in No.1079/BCDFGISSSV/2018 dated 27.11.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act

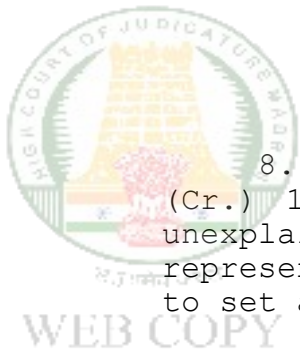


2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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.

6. It is the contention of the petitioner that the remarks were received on 04.03.2019 and there was delay of 52 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 17 days were Government Holidays, hence, there was inordinate delay of 35 days in considering the representation. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 25.04.2019.

<https://hcservices.ecourts.gov.in/hcservices/>



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 35 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 No.1079/BCDFGISSSV/2018 dated 27.11.2018 passed by the second respondent is set aside. The detenu, namely, Arunkumar @ Kendai Arun, son of Srinivasan, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

mmi/ssm
To

- 1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai - 07
- 3.The Superintendent,
Central Prison,Puzhal, Chennai.



4. The Public Prosecutor,
High Court, Madras.

WEB COPY

5. The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.

H.C.P.No. 468 of 2019

CP (CO)
SP (01/08/2019)