

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No.1667 OF 2019

Malliga

... Petitioner

vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
 2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai 600 007.
- ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention dated 21.05.2019 passed by the second respondent in No.264/BCDFGISSSV/2019, and quash the same and direct the Respondents to produce the body and person of the Petitioner's son namely, Kabali @ Rajesh, son of Sampath, aged about 30 years, detained in Central Prison, Puzhal, Chennai, before this Court.

For Petitioner : Mr.B.M.Santharam
For Respondents: Mr.R.Prathap Kumar,
Addl. Public Prosecutor

O R D E R

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

The petitioner is the mother of Kabali @ Rajesh, male, aged 30 years, S/o.Sampath, who is the detenu. The detenu has been detained by the second respondent by his order in No.264/BCDFGISSSV/2019, dated 21.05.2019, 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 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, learned counsel for the petitioner mainly focused 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 submitted that, though there was delay in considering the Petitioner's 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 21.05.2019. The petitioner made a representation on 03.08.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.08.2019 and remarks were duly received on 13.08.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.09.2019.

6. It is the contention of the learned counsel for the petitioner that there was a delay of 8 days in submitting the remarks by the Detaining Authority, of which 3 days were Government Holidays and hence there was an inordinate delay of 5 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 13.08.2019 and there was delay of 37 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 14 days were Government Holidays, hence, there was inordinate delay of 23 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable Supreme Court has held that 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 5 days in submitting the remarks and 23 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.264/BCDFGISSSV/2019, dated 21.05.2019, passed by the second respondent is set aside. The detenu, namely, Kabali @ Rajesh, male, aged 30 years, S/o.Sampath, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai - 600 009.
2. The Commissioner of Police, Greater Chennai, Office of the Commissioner of Police (Goondas Section), Vepery, Chennai 600 007.
3. The Superintendent, Central Prison, Puzhal, Chennai.

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

H.C.P. No.1667 of 2019

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