



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1821 of 2018

C.Vellathai

... Petitioner

-vs-

1. The State of Tamil Nadu
rep. by Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-9
2. The District Collector and
District Magistrate
Tirunelveli District, Tirunelveli-627 009
3. The Inspector of Police
Uvari Police Station
Tirunelveli District
4. The Superintendent
Central Prison
Palayamkottai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the records relating to the detention order passed by the 2nd respondent in M.H.S.Confdl.No.143/2018 dated 01.12.2018 and to quash the same and direct the Respondents to produce the body of the detenu, Chinnadurai, S/o.Nainar Thevar, aged about 43 years before this Court and set him at liberty, now detained at Central Prison, Palayamkottai.

For Petitioner : Mr.M.Nallamuthu

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

**ORDER**

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 01.12.2018, as against Chinnadurai, son of Nainar Thevar, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3(1) of Tamil Nadu Act 14 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the wife of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.M.Nallamuthu, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents and carefully perused the records.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

5. The learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

7. In this case, the Detention Order was passed on 01.12.2018. As against the same, the petitioner made a representation on 11.12.2018. The remarks were called for by the Government from the Detaining Authority on 26.12.2018. The remarks were received only on 18.01.2019. Thereafter, the Government considered the issue and passed the order rejecting the representation on 07.02.2019. It is the contention of the petitioner that there was a delay of 27 days in considering the representation (13 days delay in receiving the remarks and 14 days delay in preparing the rejection letter).



8. Now, the question is as to whether on that score, the impugned order can be quashed.

9. In **Rekha vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Supreme Court has further 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 of the detenu.

10. 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/detenu would be sufficient to set aside the detention order.

11. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) SCC 321], the Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Supreme Court as well as this Court.

12. Applying the said dictum laid down by the Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of 27 working days and therefore, the impugned detention order is liable to be quashed.

13. The detention order passed by the second respondent detaining the detenu Chinnadurai, son of Nainar Thevar, made in M.H.S.Confdl.No.143/2018 dated 01.12.2018, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith unless his custody is required in any other case.

Sd/-

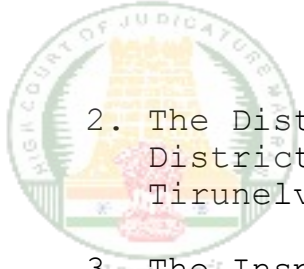
Assistant Registrar (AE)

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Sub Assistant Registrar

To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.



2. The District Collector and
District Magistrate,
Tirunelveli District, Tirunelveli-627 009.

3. The Inspector of Police,
Uvari Police Station,
Tirunelveli District.

4. The Superintendent,
Central Prison,
Palayamkottai.

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

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.NALLAMUTHU, Advocate (SR-63021[F] dated 26/04/2019)

H.C.P. (MD) No.1821 of 2018
26.04.2019

MS/28.05.2019/4P/8C