

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 942 of 2020

Kulsug Sadik Khan

..Petitioner

Vs.

1. State of Tamilnadu, Rep. by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Police,
Greater Chennai, Vepery, Chennai - 600 007.
 3. The Inspector of Police,
C-2 Elephant Gate Police Station, Chennai.
 4. The Superintendent of Prison,
Central Prison - II, Puzhal,
Chennai - 600 066.
- ..Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating to the detention order in Memo No.155/BCDFGISSSV/2020 dated 29.02.2020 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Thiru.Sadiq Ali S/o.Rafick, aged about 35 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Thiru.Sadiq Ali S/o.Rafick, aged about 35 years the detenu herein at liberty.

For Petitioner : Mr.R.Muthukumar

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

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

The petitioner is the wife of Sadiq Ali, S/o.Rafick, aged about 35 years, who is the detenu. The detenu has been detained by the second respondent by his order in Memo No.155/BCDFGISSSV/2020 dated 29.02.2020, 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. The Detention Order in question was passed on 29.02.2020. The petitioner made a representation on 21.03.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 24.04.2020. The remarks were duly received on 07.05.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 26.05.2020.

6. It is the contention of the petitioner that there was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 5 days were Government Holidays and hence there was an inordinate delay of 8 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 07.05.2020 and there was a delay of 18 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 7 days were Government Holidays, hence, there was inordinate delay of 11 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable 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 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 8 days in submitting the remarks by the Detaining Authority and unexplained delay of 11 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 Memo No.155/BCDFGISSSV/2020 dated 29.02.2020, passed by the second respondent is set aside. The detenu, namely, Sadiq Ali, S/o.Rafick, aged about 35 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

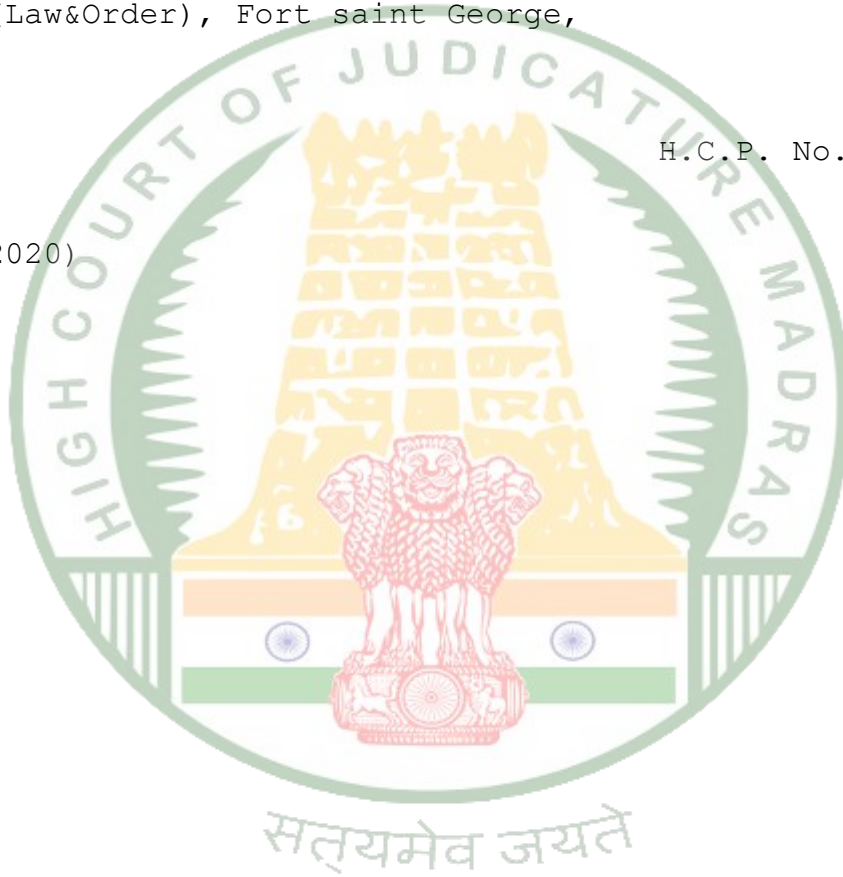
To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
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2. The Commissioner of Police,
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3. The Inspector of Police,
C-2 Elephant Gate Police Station, Chennai.
4. The Superintendent of Prison,
Central Prison - II, Puzhal,
Chennai - 600 066.
5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary to Government,
Public(Law&Order), Fort saint George,
Ch-9.

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PM(CO)
RV(02/12/2020)



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