

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.2550 of 2019

Sugumar

... Petitioner/Brother of the detenue

Vs

1.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi - 110 001.

2.The Lieutenant Governor,
Rajnivas, Puducherry.

3.The District Magistrate-cum-Authorised Officer,
Office of the District Magistrate,
1st Floor, Vazhadvavoor Road,
Kavundapalayam,
Puducherry - 605 009.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records relating to the detention order in No.08/DM/RO/D2/PPASAA/2019, dated 25.10.2019 passed by the third respondent under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and set aside the same and direct the respondents to produce the petitioner's brother Ayyappan S/o.Sundaramurthy aged about 27 years, the detenu, now confined in Central Prison, Kalapet, Puducherry before this Hon'ble Court and set the petitioner's brother Ayyappan S/o Sundaramurthy aged about 27 years, the detenu herein at liberty.

For Petitioner : Mr.U.Yuvaraj

For Respondent : Mr.Bharatha Chakkaravarthy,

Additional Public Prosecutor (Puducherry).

O R D E R

(Order of the court was made by MRS.R.HEMALATHA.J.,)

Challenge is made to the Order of detention passed by the third respondent viz., the District Magistrate-cum-Authorised

Officer, dated 25.10.2019, whereby the brother of the petitioner by name Ayyappan, S/o.Sundaramurthy was ordered to be detained under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) as dangerous person.

2.As per the grounds of Order of detention dated 25.10.2019, passed by the third respondent, the detenu was detained under the aforesaid Act since a criminal prosecution was initiated against him in Cr.No.69 of 2019 under Sections 148, 307 read with 149 of Indian Penal Code of Mettupalayam Police Station. Apart from this case, there are two other adverse cases against the petitioner viz., Cr.No.121 of 2017 for an alleged offence under Sections 387 read with 34 of Indian Penal Code of Reddiarpalayam Police Station and Cr.No.112 of 2018 for the alleged offence under Sections 20 (b) of NDPS Act read with 8 (c) of NDPS Act, 1985 of Mettupalayam Police Station.

3.Heard Mr.U.Yuvaraj, learned Counsel for the petitioner and Mr.Bharatha Chakkaravarthy, learned Additional Public Prosecutor (Puducherry) for the respondents.

4.Among other grounds, the main ground harped upon by the learned Counsel for the petitioner is that a representation submitted by the detenu on 07.11.2019 was received by the concerned authority on 09.11.2019 and that there is an abnormal delay of more than 10 days in considering the same.

5.In the decision in "C.Muthuvali Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai - 600 009" reported in "[(2017) (1) MWN (Cr.) 270 (DB)]" it has been held that an unexplained delay of nine working days on the part of the Government in considering the representation rendered the decision illegal. Another Division Bench of this Court in "Samaiah Vs.The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" has held that an unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order.

6.Further, a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" has held that "Preventive detention is by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles". Since there is an unexplained delay in considering the representation

submitted by the detenu, the detention order passed by the third respondent is liable to be set aside.

7. Accordingly, this petition is allowed by setting aside the order of detention passed by the third respondent in No.08/DM/RO/D2/PPASAA/2019, dated 25.10.2019 and the detenu is directed to be set at liberty forthwith, unless his detention is required in connection with any other case. It is also made clear that this order will not affect the criminal cases pending against the detenu.

Sd/-

Assistant Registrar (CO MDU)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi - 110 001.
- 2.The Lieutenant Governor,
Rajnivas, Puducherry.
- 3.The District Magistrate-cum-Authorised Officer,
Office of the District Magistrate,
1st Floor, Vazhadhavoor Road,
Kavundapalayam,
Puducherry - 605 009.
- 4.The Superintendent Central Prison,
Kalapet, Puducherry.
- 5.The Additional Public Prosecutor,
High Court of Madras,
Puducherry.

+1cc to The Public Prosecutor, Advocate, S.R.No. 22810

H.C.P.No.2550 of 2019

PVS (CO)
GN(25/06/2020)