

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.05.2020

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MS. JUSTICE P.T.ASHA

H.C.P. NO.2603 OF 2019

Askar Ali

...Petitioner/Father
of Detenue

-vs-

1.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner
of Police (Goondas Section),
Vepery, Chennai - 600 007.

2.The Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

...Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in Memo No.704/BCDFGISSSV/2019 dated 25.10.2019 on the file of the 1st respondent herein and set aside the same as illegal and direct the respondent to produce the detenu viz., Aburar S/o.Askar Ali, Muslim aged about 24 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner .. Mr.G.Vinodh Kumar
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 father of Aburar, male, aged 24 years, S/o.Askar Ali, who is the detenu. The detenu has been detained by the second respondent by his order in BCDFGISSSV

No.704/2019 dated 25.10.2019, holding him to be a "Drug Offender", as contemplated under Section 2(f) of the 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 25.10.2019. The petitioner made a representation on 18.11.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 22.11.2019. The remarks were duly received on 27.11.2019. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 16.12.2019.

6. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government Holidays and hence there was an inordinate delay of 3 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 27.11.2019 and there was delay of 17 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 4 days were Government Holidays, hence, there was inordinate delay of 13 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 3 days in submitting the remarks and 13 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.704/BCDFGISSSV/2019, dated 25.10.2019 passed by the second respondent is set aside. The detenu, namely, Aburar, male, aged 24 years, S/o.Askar Ali, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

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

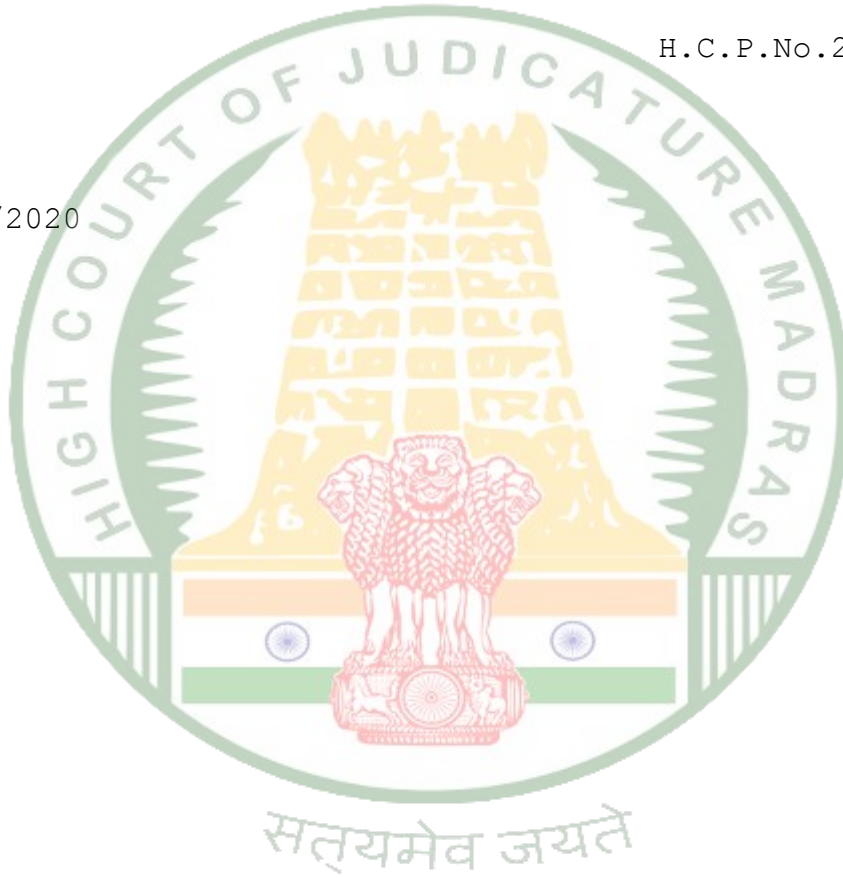
3.The Joint Secretary to Government,
Public (Law & Order),
High Court, Madras

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

5.The Public Prosecutor,
High Court, Madras.

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