

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.2727 of 2019

G.Kirubakaran

... Petitioner

-vs-

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Home Prohibition and Excise (XVI) Department,
Fort St. George, Secretariat,
Chennai - 600 009.
 - 2.The District Collector and
District Magistrate of Vellore,
Vellore District.
- ... 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 passed by the second respondent dated 22.11.2019 in his office Ref.C3.D.O.No.129/2019 against the petitioner's elder brother by name THIRU.JALENDIRAN, S/o. Ganesan aged about 43 years, now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner ... Mr.E.Kannadasan

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 younger brother of JALENDIRAN, S/o. Ganesan aged about 43 years, who is the detenu. The detenu has been detained by the second respondent by his order dated 22.11.2019 in his office Ref.C3.D.O.No.129/2019, holding him to be a "Sand 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 22.11.2019. The petitioner made a representation on 4.12.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 10.12.2019. The remarks were duly received on 22.1.2020. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 23.01.2020.

6. It is the contention of the petitioner that there was a delay of 43 days in submitting the remarks by the Detaining Authority, of which 18 days were Government Holidays and hence there was an inordinate delay of 25 days in submitting the remarks.

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 25 days in submitting the remarks. 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 22.11.2019 in his office Ref.C3.D.O.No.129/2019, passed by the second respondent is set aside. The detenu, namely, THIRU.JALENDIRAN, S/o. Ganesan aged about 43 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

mmi/msr

To

1. Secretary to Government,
State of Tamil Nadu,
Home Prohibition and Excise (XVI) Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The District Collector and
District Magistrate of Vellore,
Vellore District.
3. The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary to Government
Public (Law and Order),
Secretariat, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

WEB COPY

H.C.P.No.2727 of 2019

MG (CO)
GMY (28/07/2020)