

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.06.2021

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THE HONOURABLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.680 of 2021

Ganesamoorthy

... Petitioner

Vs.

1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai, Chennai City Police,
Office of the Commissioner of Police,

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

4.The Inspector of Police,
Central Crime Branch, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records relating to the Detention Order vide Memo No.532/BCDFGISSSV/2020 dated 31.12.2020 passed by the second respondent and set aside the same and direct the respondent to produce the body of the detenu Ayyathurai S/o.Thangaraj, aged about 32 years now confined in Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner : Mr.Arun Anbumani

for M/s.P.Rajkumar Pandian

For Respondents: Mr.R.Muniyapparaj,

Government Advocate (Criminal Side)

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner is the brother of the detenu, Ayyathurai S/o.Thangaraj, aged about 32 years who is detained in Central Prison, Puzhal, Chennai under Act 14 of 1982 (Tamil Nadu Act). The detenu has been classified as a "Goonda" by the 2nd respondent in his order of detention vide Memo

No.532/BCDFGISSSV/2020 dated 31.12.2020. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard Mr.Arun Anbumani, learned counsel appearing for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (Criminal Side) 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 representations made by the petitioner were not considered on time and there was an inordinate and unexplained delay.

4.The learned Government Advocate opposed the Habeas Corpus Petition and submitted that though there was delay in considering the representations, on that score alone, the impugned detention order cannot be quashed. According to the learned Government Advocate, 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 31.12.2020. The representations were made on 18.01.2021, 03.03.2021 and another representation on the same date. Thereafter, remarks were called for by the Government from the Detaining Authority on 09.02.2021, 05.03.2021 and 09.03.2021. The remarks were duly received on 13.02.2021, 11.03.2021 and another remark on 11.03.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representations on 27.02.2021, 15.04.2021 and another order of rejection on 15.04.2021 and the same were sent to the detenu on 01.03.2021, 19.04.2021 and another on 19.04.2021 respectively.

6.It is the contention of the petitioner that there was a delay of 4 days in submitting the remarks by the Detaining Authority in respect of the representation dated 18.01.2021, delay of 6 days in respect of the representation dated 03.03.2021, of which 2 days were Government Holidays and hence there was an inordinate delay of 4 days in submitting the remarks and delay of 2 days in respect of another representation dated 03.03.2021. It is the further contention of the petitioner that the remarks were received on 13.02.2021, 11.03.2021 and 11.03.2021 and there was delay of 11 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, 2 days were Government Holidays, hence, there was an inordinate delay of 9 days in considering the representation dated 18.01.2021, delay of 31 days, in respect of one representation dated 03.03.2021, of which 11 days were Government Holidays, and hence, there was an inordinate delay of 20 days in considering the representation dated 03.03.2021 and delay of 31 days, in respect of another representation dated 03.03.2021, of which 11 days were Government Holidays, hence, there was an inordinate delay of 20 days in considering the representation dated 03.03.2021.

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 4 days, 4 days and 2 days in submitting the remarks by the Detaining Authority and unexplained delay of 9 days, 20 days and 20 days respectively in considering the three representations 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.532/BCDFGISSSV/2020 dated 31.12.2020, passed by the second respondent is set aside. The detenu, namely, Ayyathurai S/o.Thangaraj, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

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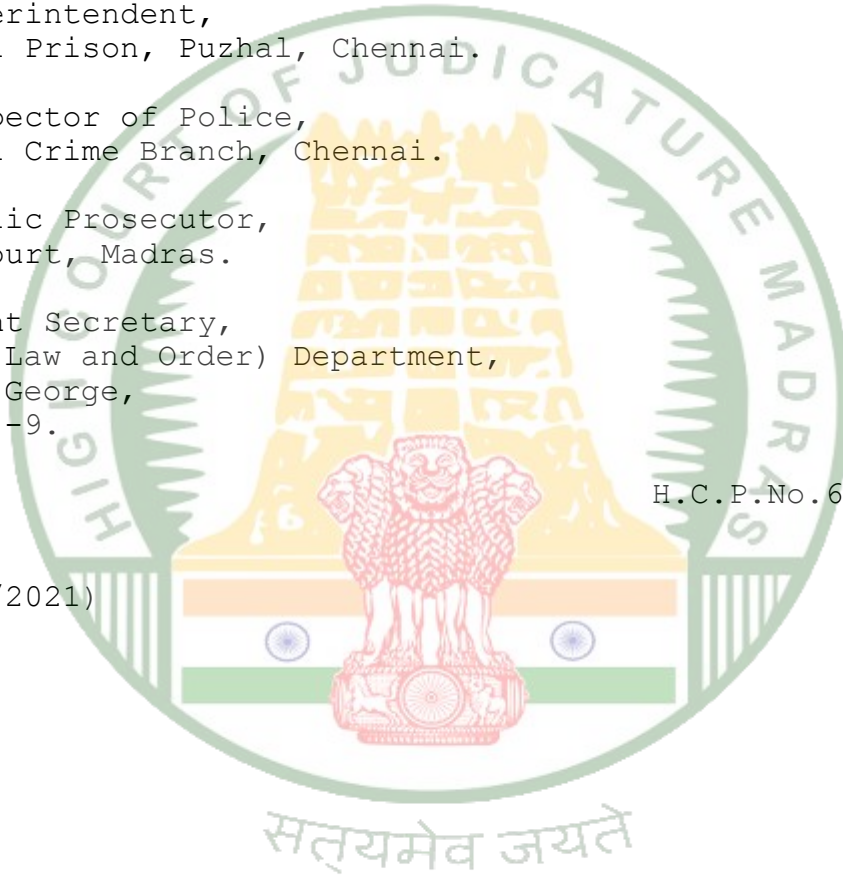
Sub Assistant Registrar

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To

- 1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Chennai City Police,
Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Central Crime Branch, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Joint Secretary,
Public (Law and Order) Department,
Fort St.George,
Chennai -9.

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VSNI (CO)
RMP (11/06/2021)



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