

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH  
and  
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2298 of 2020

Raja Gopal,  
S/o.Muthu Aasari

Petitioner /  
Father of the detenu

versus

- 1.The Principle Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 600 009.
- 2.The District Magistrate and  
District Collector,  
Namakkal District Collector Office,  
Namakkal District.
- 3.The Superintendent of Police,  
Office of the Superintendent of Police,  
Namakkal District.
- 4.The Superintendent of Prison,  
Office of the Superintendent of Prison,  
Salem Central Prison.
- 5.The Inspector of Police,  
Namakkal Police Station,  
Namakkal District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order in C.M.P.No.15/Goonda/2020/M1 on 07.09.2020 on the file of the second respondent and quash the same and direct the respondents to produce the body and person of the petitioner's son namely, Don @ Saravanan @ Saravana Kumar, S/o.Rajagopal, aged about 30 years now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.M.Mohamed Saifulla  
For Respondents : Mr.R.Prathap Kumar  
Additional Public Prosecutor

O R D E R

[Order of the Court was made by R.PONGIAPPAN, J.]

The petitioner is the father of the detenu, Don @ Saravanan @ Saravana Kumar, son of Rajagopal, aged about 30 years. The detenu has been detained by the second respondent by its order dated 07.09.2020 in C.M.P.No.15/Goonda/2020/M1, holding him to be a "Goonda", 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 07.09.2020. The petitioner made a representation on 03.12.2020. Thereafter, remarks were called for by the Government from the Detaining Authority on 08.12.2020. The remarks were duly received on 11.02.2021. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 27.02.2021.

6. It is the contention of the petitioner that there was a delay of 65 days in submitting the remarks by the Detaining Authority, of which 22 days were Government Holidays

and hence, there was an inordinate delay of 43 days in submitting the remarks. It is the further contention of the petitioner that the remarks were received on 11.02.2021 and there was a delay of 16 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 12 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 43 days in submitting the remarks by the Detaining Authority and unexplained delay of 12 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 C.M.P.No.15/Goonda/2020/M1 dated 07.09.2020, passed by the second respondent is set aside. The detenu, viz. Don @ Saravanan @ Saravana Kumar, S/o.Rajagopal, aged about 30 years, 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

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To

1.The Principle Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 600 009.

2.The District Magistrate and  
District Collector,  
Namakkal District Collector Office,  
Namakkal District.

3.The Superintendent of Police,  
Office of the Superintendent of Police,  
Namakkal District.

4.The Superintendent of Prison,  
Office of the Superintendent of Prison,  
Salem Central Prison.

5.The Inspector of Police,  
Namakkal Police Station,  
Namakkal District.

6.The Joint Secretary to Government of Tamil Nadu,  
Public, Law and Order Department,  
Secretariat, Chennai - 9.

7.The Public Prosecutor,  
High Court, Madras.

H.C.P.No.2298 of 2020

SSN (CO)  
KM(30/04/2021)

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