
(2015) 09 MAD CK 0038
In the Madras High Court
Case No : H.C.P (MD)No. 348 of 2015

Kesavan Chettiyar

APPELLANT

Vs

State represented by The Secretary, to Government

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 3 MadWNCri 523

Hon'ble Judges : Mr. S. Nagamuthu and Mr. V.S. Ravi, JJ.

Bench : Division Bench

Advocate : Mr. J. William Christopher, Advocate, for the Petitioner; Mr. T. Mohan Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.S. Ravi, J.—The petitioner is the guardian of one Sakthivel. The detenue has been detained as per the order of the second respondent under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda".

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and we have also perused the records carefully.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the Petitioner would mainly focus his argument on the ground that there is violation of procedural safeguards, which are guaranteed under Articles 21 and 22 of the Constitution of India. The learned counsel would submit that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay. The learned counsel has relied on few Judgments of the Hon"ble Supreme Court. Based on the same, the learned counsel would plead for setting aside the detention order.

4. But, the learned Additional Public Prosecutor would, however, oppose this Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score, the impugned detention order

need not be interfered with, as on account of the said delay, 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. We have considered the above submissions.

6. In this case, the Detention Order was passed on 04.03.2015. As against the same, the petitioner made a representation on 16.03.2015. The remarks were called for by the Government from the Detaining Authority on 19.03.2015. The remarks were received on 30.03.2015. Thereafter, the Government considered the issue and passed the order rejecting the representation on 13.04.2015. It is the contention of the petitioner that there was delay of seven days in submitting the remarks by the Detaining Authority and there was delay of five days on the part of the Government in considering the same.

7. Now, the question is as to whether on that score, the impugned order can be quashed.

8. In *Rekha v. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon''ble Supreme Court has held that the right to life and liberty of a person is protected, under Article 21 of the Constitution of India. The Hon''ble Supreme Court has further 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 of the detenu.

9. In *Sumaiya v. 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/detenue would be sufficient to set aside the detention order.

10. In *Tara Chand v. State of Rajasthan and others*, [1980 (2) SCC 321], the Hon''ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal. This dictum has been followed in several Judgments consistently by the Hon''ble Supreme Court as well as this Court.

11. Applying the said dictum laid down by the Hon''ble Supreme Court, if we look into the facts of the present case, undoubtedly, there is an inordinate and unexplained delay of twelve working days and therefore, the impugned detention order is liable to be quashed.

12. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his Detention Order in No. 11/2015, dated 04.03.2015 is quashed. The detenu, namely, Sakthivel, S/o. Balaji, aged 24 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.