

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.2329/2015

Usha Rani

.. Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Prohibition & Excise Department (Home),
Secretariat, Chennai-9.

2.The Commissioner of Police,
Vepery, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus call for the records relating to the detenu's detention order passed by the second respondent in Memo No.BCDFGISSSV/No.201/2015 dated 28.02.2015 and set aside the same and produce the detenu Balaji, male, aged about 36, son of Sadasivam, now detained in Central Prison-II, Puzhal, Chennai, before this Court and set him at liberty.

For petitioner : Mr.S.Elan Kumaran

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

[Order of the Court made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Memo No.BCDFGISSSV/No.201/2015 dated 28.02.2015, whereby son of the petitioner/detenu, by name, Balaji, aged about 36, son of Sadasivam, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, Mr.S.Elan Kumaran, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.Learned counsel appearing for the petitioner submitted that the occurrence in the ground case has taken place on 17.10.2014, whereas the detention order was passed on 28.02.2015 i.e. after a lapse of seventy days. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court reported in 2005 MLJ (Crl.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another).

4.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5.We have heard the learned counsel for both sides with regard to the facts and citation.

6.A perusal of the grounds of detention as well as the detention order passed by the detaining authority would show that the same was passed on 28.02.2015, but a perusal of the grounds of detention in particular paragraph No.3 would show that the occurrence in the ground case took place on 17.10.2014. This shows an inordinate delay of seventy days in passing the detention order. There is no explanation forthcoming on the side of the respondents. Learned counsel for the petitioner has also rightly placed reliance on the decision in Ramesh's case (cited supra) wherein this Court has held as follows:

".....

3.It is brought to our notice by the learned Government advocate that the analyst report was received on 06.12.2014 and the doctor has issued certificate on 07.12.2014. Even in the counter affidavit filed by the first respondent, it is stated that the sponsoring authority has submitted his affidavit only on 15.01.2015. When the sponsoring authority is in possession of the analyst report and the doctor's report even on 06.12.2014 and 07.12.2014, there is no proper explanation for submitting his affidavit till 15.01.2015 for invoking the provisions of Tamil Nadu Act 14 of 1982. Even thereafter, the impugned detention order was passed only on 27.02.2015, i.e. After five weeks of receipt of the

affidavit from the sponsoring authority. Though the detaining authority has filed a counter affidavit, there is no explanation for the undue delay in passing the impugned order.

4. In this regard, learned counsel for the petitioner relied on unreported decision of this Court rendered in H.C.P. No.1149 of 1995, dated 13.12.1995. In similar circumstances, after pointing out the unexplained delay between the date of submission of the affidavit by the sponsoring authority and the detention order, the Division Bench of this Court has concluded thus:

"Such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders.

....."

7. In view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law and the same is liable to be set aside.

8. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vga
To

1. The State of Tamil Nadu,
represented by its Secretary to Government,
Prohibition & Excise Department (Home),
Secretariat, Chennai-9.
2. The Commissioner of Police, Vepery, Chennai.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent of Central Prison, Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (Law & Order), Fort St. George, Chennai 9.

skv co, kra 19/11/2015

H.C.P.No.2329/2015