

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.546/2015

Kousilya

.. Petitioner

Vs.

1. The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department,
Fort St George, Chennai-9.

2. The District Magistrate & District Collector
Salem City, Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order of detention passed by the 2nd respondent in CMP No.7/Goonda/C2/2015 dated 11.02.2015 and set aside the same and direct the respondents to produce the detenu Kiruba @ Kirubakaran, son of Ayyavu, aged about 29 years, before this Court now confined in Central Prison, Salem, and set him at liberty.

For petitioner : Mrs.L.Srileka

For respondents : Mr.M.Maharaja, APP

O R D E R

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in CMP No.7/Goonda/C2/2015 dated 11.02.2015, whereby the detenu/the son of the petitioner herein, by name, Kiruba @ Kirubakaran, son of Ayyavu, aged about 29 years, 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, Mrs.S.Srileka, the learned counsel appearing for the petitioner, confines her 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 in Cr.No.317/2014 registered by Attayampatty Police Station took place on 02.09.2014 ; whereas the detention order was passed on 11.02.2015 i.e. after a lapse of five months. This inordinate delay in passing of detention order would vitiate the same and there is no proximity and live link between the detention of the detenu and the alleged prejudicial activities, necessitating the Detaining Authority to arrive at the subjective satisfaction that there is likelihood of the detenu coming out on bail in the ground case. 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) and also on the judgment of a Division Bench of this Court dated 12.10.2012 made in Habeas Corpus Petition.Nos.380, 617 and 1406 of 2012 [PARAPPATY SURESH @ SURESHKUMAR, AMUTHA GOWSIGA BOOPATHY AND LEELA Vs. THE COMMISSIONER OF POLCIE, SALEM CITY POLICE, SALEM AND 2 OTHERS].

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 Detention Order was passed on 11.02.2015 ; but a perusal of the grounds of detention, in particular paragraph No.3, would show that the occurrence in the ground case took place as early as on 02.09.2014, i.e., the detention order was passed after a lapse of more than 90 days. This shows an inordinate delay of five months in passing the detention order and there is absolutely no "proximity" and "live link" between passing of the detention order and the offences alleged against the detenu herein which necessitated the Detaining Authority to pass the order of detention as against the detenu. There is no explanation forthcoming on the side of the respondents for this inordinate delay in passing the detention order. Learned counsel for the petitioner has 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.It is also relevant to refer the judgment of this Court dated 12.10.2012 made in HCP.Nos.380, 617 and 1406/2012 [cited supra], wherein the Division Bench has held as follows:-

".....

37.A Full Bench of this Court in the decision reported in 2005[2] LW [Cr1.] 946 [FB] [K.THIRUPATHI V. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPPALLI DISTRICT AND ANOTHER] referring the decisions of the Hon'ble Apex Court, held as follows:-

"25.It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with Article 22 of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty".

[Emphasis Supplied]

The principles laid down by the Hon'ble Apex Court in the decisions cited supra make it clear that non-furnishing of material and vital documents also vitiates the detention orders

[IV]Whether there is proximity between the offences referred in the detention orders passed against the detenus and whether there is compelling necessity for the Detaining Authority to pass the detention orders?

38.Mr.N.Natarajan, learned Senior counsel appearing for the detenus strenuously contended that the offences said to have been committed by the detenus in respect of the adverse cases related to the years 2007, 2008, 2009 and 2011 and there is no proximity and live link between the detention of the detenus and the alleged prejudicial activities, necessitating the Detaining Authority to arrive at the subjective satisfaction that there is imminent possibility or compelling necessity to pass the detention orders.

[Emphasis Supplied]

39.It is pointed out by the learned Senior Counsel that in respect of Habeas Corpus Petition.No.380/2012, the occurrence in the first adverse case took place on 13.08.2010 which relates to offence of murder ; the occurrence in the 2nd adverse case was on 20.01.2008 ; the occurrence took place in the 3rd adverse case on 28.03.2007 ; the occurrence in the 4th adverse case was between August 2007 and 12.01.2009 and the occurrence in the ground case was said to have taken place on 14.09.2009.

45.In view of the aforesaid factors, we have no hesitation to hold that there is absolutely no 'proximity' and 'live link' between passing of detention order and the offences alleged against the detenus herein."

8.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9.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 on the ground of inordinate and unexplained

delay in passing the detention order and the same is liable to be set aside.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order 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

To

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

H.C.P.No.546/2015

mp[co]
srg 04.08.2015

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