

In the High Court of Judicature at Madras

Dated : 21.6.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOAHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Habeas Corpus Petition No.2607 of 2016

Govindammal

...Petitioner

Vs

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

2. The Commissioner of Police,
Detaining Authority, Tirupur
City, Tirupur.

...Respondents

PETITION under Article 226 of The Constitution of India seeking to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent in his proceedings C.No.20/G/IS/2016 dated 12.11.2016 against the petitioner's son Mohankumar (a) Kumar, S/O Gopal, aged 34 years, who is confined at the Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner :

Mr.C.Mohanraj

For Respondents :

Mr.V.M.R.Rajentran, APP

ORDER

(Order of the Court was made by NOOTY.RAMAMOAHANA RAO,J)

This writ petition is instituted, calling in question the validity of the detention order passed on 12.11.2016 by the Commissioner of Police, Tirupur City, detaining one Mohankumar (a) Kumar, a resident of Rajiv Gandhi Nagar, Tirupur, as he answered the definition of the expression 'Goonda' as defined in Section 2(f) of the Tamil Nadu Act 14 of 1982. On the same day, the grounds of detention have also been drawn and served on the

detenu.

2. The Commissioner of Police, who exercised the power available to him under Section 3 of the said Act and detained the said Mohankumar (a) Kumar, has specifically adverted to three criminal cases, which have been booked as

(i) Cr.No.291 of 2016 in connection with an incident that took place on 25.3.2016;

(ii) Cr.No.810 of 2016 relating to an incident that took place on 02.9.2016; and

(iii) another Cr.No.812 of 2016 relating to an event that took place on the next date namely 03.9.2016.

He has also narrated the reasons, which allowed him to subjectively form his opinion that the detenu Mohankumar (a) Kumar answered the definition of expression 'Goonda' and to prevent him from indulging in acts, which are capable of disturbing peace and tranquillity of the society at large and also impact law and order in Tirupur City, which prompted him to pass the order of detention on 12.11.2016.

3. Sri.C.Mohanraj, learned counsel for the petitioner, who entered appearance last week in this matter, as the counsel, who filed the case, expired in the meantime, would submit that very unjustly, the Commissioner of Police exercised the power against the detenu. According to the learned counsel for the petitioner, there are no valid and substantial grounds or reasons for detaining Mohankumar (a) Kumar.

4. Though several contentions have been canvassed at the bar, but however, one contention canvassed by the learned counsel deserves immediate and serious attention to be paid by us. It is the submission of the writ petitioner that the detenu has submitted a detailed representation against the order of detention dated 12.11.2016. That representation came to be rejected after a lapse of more than six weeks' time. He would, therefore, urge that there was extraordinary and unexplained delay in dealing with the representation submitted by the detenu against his detention order.

5. When we ascertained the reasons and factors that caused the delay in dealing with the representation of the detenu, the learned Additional Public Prosecutor would submit that a representation dated 29.11.2016 has been received by the Government on 02.12.2016 and immediately on the same day, para wise remarks were called for and the para wise remarks were made available in less than two weeks thereafter on 14.12.2016. The file was prepared and submitted on the same day i.e. 14.12.2016 and on the next date i.e. 15.12.2016, both the Under Secretary and the Deputy Secretary have dealt with the file. But however,

for certain extraordinary reasons, the Honourable Minister, who has to take a decision on the representation, could examine it only on 19.1.2017 and the representation was rejected on 20.1.2017. The rejection was communicated to the detenu on 23.1.2017.

6. It is submitted that there were five holidays in between the date of submission of the representation and the end of the month of December 2016. In January 2017, there were six holidays between 1st January and 16th January. Thus, according to the learned Additional Public Prosecutor, there was no extraordinary or deliberate delay on the part of the Government in dealing with the representation submitted by the detenu.

7. While we could see that there were certain extraordinary events that have taken place in this State in the first week of December 2016, ultimately resulting in death of the then Honourable Chief Minister on 05.12.2016 and it was true that the State Administration was certainly pre-occupied in making appropriate arrangements for conducting the funeral of the departed leader. The State Administration was also concerned with maintaining the law and order situation in the State as a whole in general and particularly in the State capital at Chennai. But, that is no reason for the Honourable Minister, to whom, the file has been forwarded on 15.12.2016, not to attend to the said file till 19.1.2017 i.e. for a period of more than one month. No justifiable reason is offered for this long period of silence.

8. The Supreme Court, in the case of Rajammal Vs. State of Tamil Nadu [reported in 1999 (1) SCC 417], has clearly held that where there is no justifiable explanation offered, the delay in dealing with the representation submitted by the detenu against his detention vitiates further detention of the detenu, as the delay in dealing with the representation of the detenu against his detention would amount to denying an effective representation against the extraordinary order of preventive detention. There is no other remedy possibly available against the preventive detention order to the detenu except to draw a detailed representation protesting against his unjust detention. Therefore, any delay in dealing with the said representation sent by the detenu as expeditiously as is possible would transform into rendering the very right of submission of representation, conferred under Article 22(5) against detention, meaningless and nugatory. Hence, we are of the opinion that the delay in between 15.12.2016 and 19.1.2017, notwithstanding the unexpected calamity that befell on the State and its citizens at about that time, has vitiated the further continuance of the detention. We are, therefore, of the further opinion that this writ petition deserves to be allowed by declaring the further detention of the detenu as wholly unsustainable.

9. Accordingly, the above Habeas Corpus Petition is allowed and the further detention pursuant to the order of detention passed by the second respondent in C.No.20/G/IS/2016 dated 12.11.2016 is not sustainable. The detenu Mohankumar (a) Kumar, S/o.Gopal is directed to be set at liberty forthwith.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Home, Prohibition & Excise
Department, Fort.St.George, Chennai-9.
- 2.The Commissioner of Police, Tirupur City, Tirupur.
- 3.The Public Prosecutor,High Court, Madras
4. The Superintendent, Central Prison
Coimbatore.
5. The Joint Secretary to Government
Public(Law and order)
Fort.St. George
Chennai 9

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KGK (CO)
sp(04/07/2017)

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