

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1091 of 2018

Bharath
S/o.Vasanthappa ... Petitioner
vs.

- 1.The State of Tamil Nadu,
represented by its
Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.
- 2.The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in S.C.No.22 of 2018 dated 23.03.2018 on the file of second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Siva @ Sivakumar S/o.Sankaran, aged 22 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

WEB COPY
O R D E R
(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the cousin brother of the detenu Siva @ Sivakumar S/o.Sankaran, who has been branded as "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in S.C.No.22/2018 dated 23.03.2018. Such order is under challenge herein.

2. The alleged ground case has been registered against the detenu in Crime No.18 of 2018 on the file of Hudco Police Station, for offences u/s.448, 147, 148, 324 and 363 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. We have heard learned counsel for petitioner and learned Additional Public Prosecutor for respondents. Perused the materials on record.

4. Learned counsel for petitioner submits that the detenu was surrendered on 06.02.2018, produced before Court on 20.02.2018 in respect of the ground case and the order of detention came to be passed on 23.03.2018. A period of more than a month had lapsed between the date of arrest of the detenu and the sponsoring authority recommending his detention. Such long delay stands not explained and hence, the order of detention is liable to be set aside following the order of Division Bench of this Court in Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another [2005 MLJ (Cri.) 752].

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. In the decision relied upon by learned senior counsel for petitioner in Ramesh's case (cited supra), 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.....".'

Following the principle enunciated in the above said order of the Division Bench of this Court, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu Siva @ Sivakumar S/o.Sankaran in S.C.No.22/2018 dated 23.03.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

gm

To

1. The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
2. The District Collector and District Magistrate,
Krishnagiri District, Krishnagiri.
3. The Superintendent of Police, Central Prison, Salem.
4. The Joint Secretary to Government, Public (Law & Order)
Fort St.George, Chennai - 600009.
5. The Public Prosecutor, High Court, Madras.

H.C.P.No.1091 of 2018

GMY (03/10/2018)