

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.06.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

H.C.P. NO. 117 OF 2018

Gowri

.. Petitioner

- Vs -

1. The Secretary to Govt.
Home Prohibition & Excise Department,
Fort St. George, Chennai 600 009.

2. The Commissioner of Police
Greater Chennai
Vepery, Chennai 600 007.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in BCDFGISSSV No.718/2017 dated 15.11.2017 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu Arun, S/o Kannan aged about 23 years, now confined at Central Prizon, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. A.Nirmal Kumar

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The second respondent, Commissioner of Police, Greater Chennai, clamped an order of detention on 15.11.2017 as against Arun, S/o Kannan, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the mother of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.Nirmal Kumar, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. It is contended that there is a delay in considering the representation and this has rendered the detention illegal. Learned Addl. Public Prosecutor appearing for the respondents conceded that though there is a delay in considering the representation, but the said delay, in no way vitiates the order of detention. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the delay.

5. In *Rashid Kapadia v. Medha Gadgil*, (2012 (11) SCC 745), the Supreme Court had occasion to consider the effect of delay in considering the representation and in that context held as under :-

"13. It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the authority concerned as expeditiously as possible, is a constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of judgments where the principle is discussed in detail. They are: *Mohinuddin v. District Magistrate, Beed* [(1987) 4 SCC 58 : 1987 SCC (Cri) 674] and *Harshala Santosh Patil v. State of Maharashtra* [(2006) 12 SCC 211 : (2007) 1 SCC (Cri) 680]."

6. In view of the above proposition, the delay in considering the representation submitted by the petitioner, which has not been explained properly has vitiated the order of detention. The delay is fatal to the order of detention and this has rendered the detention illegal.

7. On this short ground, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Arun, S/o Kannan, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

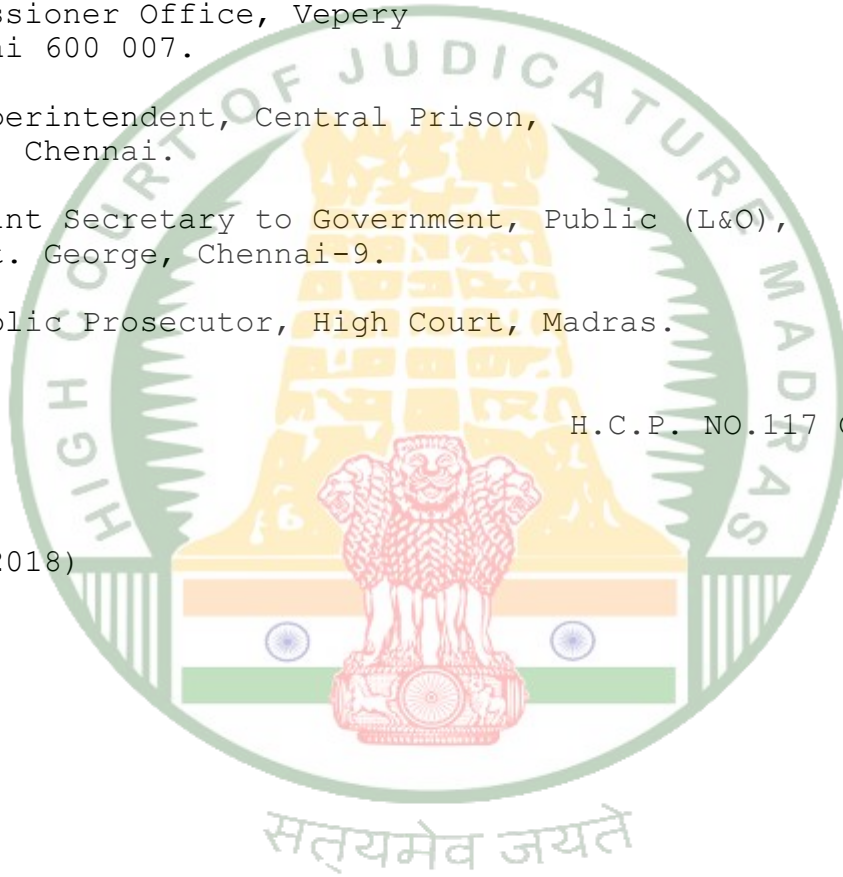
GLN

To

1. The Secretary to Govt.
Dept. of Prohibition & Excise (Home)
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Chennai City Police, Greater Chennai
Commissioner Office, Vepery
Chennai 600 007.
3. The Superintendent, Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government, Public (L&O),
Fort St. George, Chennai-9.
5. The Public Prosecutor, High Court, Madras.

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SVI (CO)
EU (04/07/2018)



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