

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.1344 of 2018

Madheswari
W/o.Sivakumar

... Petitioner

vs.

1.The State of Tamil Nadu
represented by its
Secretary to Government (Home),
Prohibition & Excise Department,
Secretariat, Chennai - 600009.

2.The District Magistrate and District Collector,
Namakkal District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents to produce the body of the petitioner's husband namely Sivakumar S/o.Veerappa Gounder, who is detained at Central Prison, Salem, before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order made in C.M.P.No.08/Goonda/2018/M1 dated 16.05.2018 on the file of second respondent and quash the same.

For Petitioner : Mr.R.Nalliyappan

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

O R D E R

(Order of the Court was made by C.T.SELVAM, J)

Petitioner is the wife of the detenu Sivakumar S/o.Veerappa Gounder, who has been branded as "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in C.M.P.No.08/Goonda/2018/M1 dated 16.05.2018. Such order is under challenge herein.

2. The alleged ground case has been registered against the detenu in Crime No.34 of 2018 on the file of Belukurichi Circle, for offences u/s.341, 323, 307 and 302 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 23.03.2018, taken into custody on 28.03.2018 in respect of the ground case and the order of detention came to be passed on 16.05.2018. A period of more than a month and half had lapsed between the date of surrender 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 (Crl.) 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 Sivakumar S/o.Veerappa Gounder in C.M.P.No.08/Goonda/2018/M1 dated 16.05.2018 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 IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government (Home),
Prohibition & Excise Department,
Secretariat, Chennai - 600009.
- 2.The District Magistrate and District Collector,
Namakkal District.
- 3.The Public Prosecutor, सत्यमेव जयते
High Court, Madras.
- 4.The Superintendent of Prison,
Central Prison,
Salem.

H.C.P.No.1344 of 2018

srg 26/09/2018