

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.06.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Habeas Corpus Petition No.151 of 2018

Kuppurani .. Petitioner/Mother of Detenue

- Vs -

1. State of Tamil Nadu
Rep. By the Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
 2. The Commissioner of Police
Greater Chennai
Vepery, Chennai
- ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in Memo No.BCDFGISSSV 04/2018, dated 05.01.2018 on the file of the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenue, Rajesh @ Katteri Rajesh, Son of Mani, aged 35 years, now confined in Central Prison, Puzhal, before this Court and to set him at liberty.

For Petitioner : Mr. S.Vellidoss

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(Order of the Court was made by Dr. S.Vimala, J.,)

The second respondent, Commissioner of Police, Greater Chennai, clamped an order of detention on 05.01.2018 as against Rajesh @ Katteri Rajesh, S/o. Mani, male, aged 35 years, 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 detainee has come forward with the present habeas corpus petition.

3. Heard Mr.S.Vellidoss, 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 there is only a delay of 5 days and it 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 detainee, Rajesh @

Katteri Rajesh, Son of Mani, aged 35 years, now confined in Central Prison, Puzhal, Chennai, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

srk

To

1. The Secretary, State of Tamil Nadu
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai
3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Inspector of Police,
L& O, J-6, Thiruvanmiyur Police Station,
Chennai.
5. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai-9.
6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.151 of 2018

SJ(CO)
GN(06/07/2018)

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