

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. 161 OF 2018

P.Jayaganesh

.. Petitioner

- Vs -

1. The Secretary to Government
Home, Prohibition & Excise Dept.
Secretariat
Chennai 600 009.

2. The District Collector &
District Magistrate
Dharmapuri District
Dharmapuri.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in S.C. No.29/2017 dated 19.12.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Jayaprakash, S/o Ponnappa Naidu, aged about 29 years, now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. S.Senthilvel

For Respondents: Mr. R.Prathap Kumar, APP

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

The 2nd respondent, District Collector & District Magistrate, Dharmapuri, clamped an order of detention on 19.12.2017 as against Jayaprakash, S/o Ponnappa Gounder, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Sexual Offender' 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 brother of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr. S.Senthilvel, 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 of 10 days but 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 detenu, Jayaprakash, S/o Ponnappa Naidu, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1.

The Secretary to Govt. of TamilNadu
Dept. of Prohibition & Excise (Home)
Fort St. George, Chennai 600 009.

2. The District Collector &
District Magistrate
Dharmapuri District
Dharmapuri.

3. The Superintendent ,
Central Prison, Salem

4. The Joint Secretary of Government
Public (Law & order)
fort saint george,
Chennai-9

5. The Public Prosecutor,
High Court, Madras.-104.

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GJ(CO)
GSP(04/07/2018)