IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM

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

H.C.P.No.1037 of 2018

Kanchana

.. Petitioner

Vs.

1.State of Tamil Nadu,
represented by The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai.

2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention NO.318/BCDFGISSSV/2018 dated, 09/05/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Thiru.Vinoth, S/O.Ravi, who is presently detained in the Central Prison, Puzhal, Chennai to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.T.V.Somasundaram

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.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo

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No.318/BCDFGISSSV/2018 dated 09.05.2018, whereby the detenu, by name, Vinoth, son of Ravi, aged about 25 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. The detenu has come to adverse notice in the following cases:-

Sl.No.	Police Station and Crime No.	Section of Law
1.	P-3 Vyasarpadi Police Station Crime No.278/2018	147, 148, 341, 294 (b), 324, 307, 506 (ii) IPC

The ground case has been registered against the detenu in Cr.No.287/2018 on the file of Inspector of Police, P-3 Vyasarpadi Police Station for offences u/s 147, 148, 341, 294 (b), 336, 397, 506(ii) IPC and Section 3 of TNPPDL Act 1992. The detention order has been passed by Second respondent in Memo No.318/BCDFGISSSV/2018.

3. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.287/2018 on 03.04.2018; whereas the detention order was passed on 09.05.2018, i.e. Nearly after a lapse of 36 days. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court reported in 2005 MLJ (Crl.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another).

5. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6. We have heard the learned counsel for both sides with regard to the facts.

7. A perusal of the grounds of detention as well as the

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detention order passed by the detaining authority would show that the Detention Order was passed on 09.05.2018. Further, the detenu was arrested in the ground case as early as on 03.04.2018. This shows an inordinate delay of nearly 36 days in passing the detention order. There is no explanation forthcoming on the side of the respondents for this inordinate delay in passing the detention order. Learned counsel for the petitioner has rightly placed reliance on the decision in Ramesh's case (cited supra) wherein 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.
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> 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:
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> "Such delays tend to have an affect of snapping the link between prejudicial activity and passing of preventive orders....."

8. In view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order is set aside. The detenu is

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directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

kmi

To:
1.The Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George, Chennai.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
4.The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5.The Public Prosecutor
High Court, Madras.

H.C.P.No.1037 of 2018

RR(CO)

GMY(30/10/2018)

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