

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM

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

H.C.P.No.1046 of 2018

Balamurugan
S/o.Parasuraman

... Petitioner

-vs-

1.State of Tamilnadu,
represented by
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.

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

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the records in Memo No.294/BCDFGISSSV/2018 passed by second respondent on 03.05.2018, set aside the same and direct the respondents to produce the detenu Balamurugan S/o.Parasuraman, aged about 22 years, presently confined at Central Prison, Puzhal II, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.A.Elumalai

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

O R D E R

(The order of the Court was made by C.T.SELVAM, J)
Petitioner, who is the detenu, has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in No.294/BCDFGISSSV/2018 dated 03.05.2018.

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

Sl.No.	Police Station and Crime No.	Sections of Law
1.	K.7 ICF Police Station, Crime No.691/2017	457 and 380 IPC
2.	K.7 ICF Police Station, Crime No.760/2017	380 IPC
3.	K.7 ICF Police Station, Crime No.9/2018	454 and 511 IPC
4.	K.7 ICF Police Station, Crime No.86/2018	457 and 380 IPC

The alleged ground case has been registered against the detenu in Crime No.87 of 2018 on the file of K.7 ICF Police Station, for offences under Sections 341, 294(b), 336, 392, 397 and 506 (ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Learned counsel for petitioner submits that the detenu was arrested on 28.03.2018 in respect of the ground case and the order of detention came to be passed on 03.05.2018. A period of more than a month had lapsed between the date of arrest 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 (Cr1.) 752].

4. We have heard learned Additional Public Prosecutor on the above submissions.

5. In the decision relied upon by learned 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 Balamurugan S/o.Parasuraman in No.294/BCDFGIISSSV/2018 dated 03.05.2018 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(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.

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

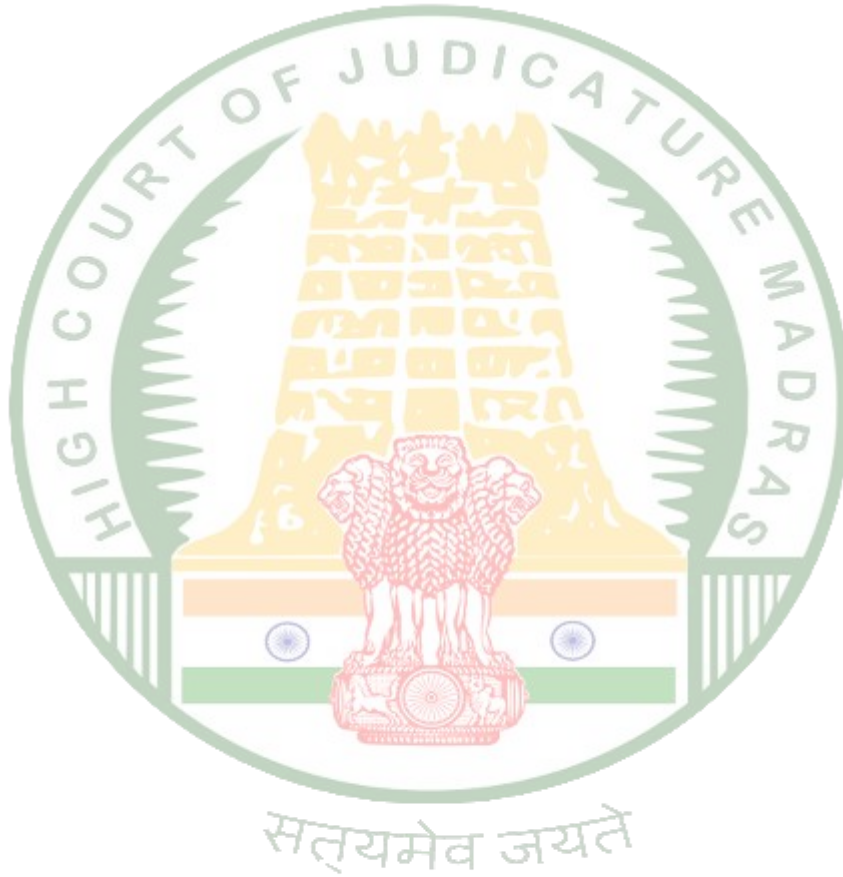
3.The Public Prosecutor
High Court, Chennai.

4.The Superintendent of Police,
Central Prison,
Puzhal, Chennai.

5.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9.

H.C.P.No.1046 of 2018

KGK (CO)
CSL/12.11.2018



WEB COPY