

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. 165 OF 2018

Jayalakshmi ... Petitioner/Mother of the Detenu

- Vs -

1. The District Collector & District Magistrate
Collectorate Office
Tiruvannamalai.
2. Government of Tamil Nadu
rep. By its Secretary to Govt.
Home, Prohibition & Excise Dept.
Secretariat, Chennai 600 009.
3. The Superintendent
Central Prison, Vellore District. ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in D.O. No.03/2018-C2 dated 06.01.2018 on the file of the 1st respondent herein and quash the same and direct the respondents to produce the detenu Ezhumalai, S/o Devendiran Gounder, aged about 23 years, now confined at Central Prison, Vellore, before this Hon'ble Court and set him at liberty.

For Petitioner : Ms. S.P.Arthi

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The second respondent, Commissioner of Police, Greater Chennai, clamped an order of detention on 06.01.2018 as against Ezhumalai, S/o Devendiran Gounder 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 detenu has come forward with the present habeas corpus petition.

3. Heard Ms. S.P.Arthi, 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 10 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 detenu, Ezhumalai, S/o Devendiran Gounder is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

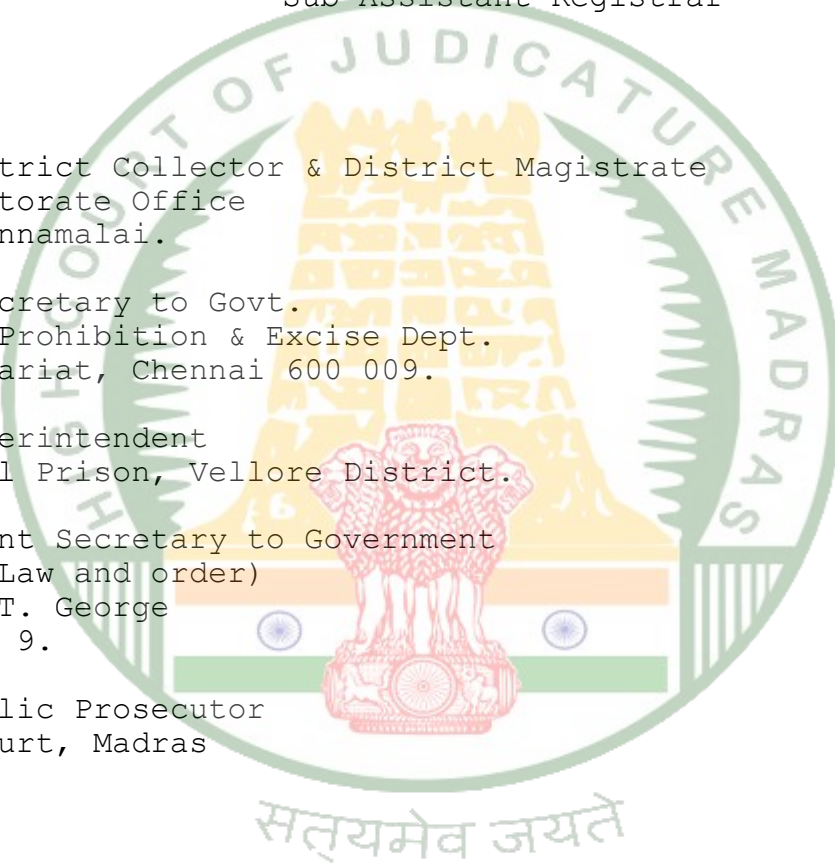
-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

GLN
To

1. The District Collector & District Magistrate
Collectorate Office
Tiruvannamalai.
2. The Secretary to Govt.
Home, Prohibition & Excise Dept.
Secretariat, Chennai 600 009.
3. The Superintendent
Central Prison, Vellore District.
4. The Joint Secretary to Government
Public(Law and order)
Fort. ST. George
Chennai 9.
5. The Public Prosecutor
High Court, Madras



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NRI (CO)
SP(06/07/2018)

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