

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

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

Habeas Corpus Petition No.180 of 2018

Shanthi

.. Petitioner

- Vs -

1. The State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9
2. The Commissioner of Police,
Chennai Police,
Vepery, Chennai - 7

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in Memo No.21/BCDFGISSSV/2018 dated 17.01.2018 on the file of the 2nd respondent herein, to set aside the same as illegal and direct the respondents to produce the petitioner's husband, the detinue, Dakshana @ Dakshanamoorthy, S/o. Varathan, Male, aged about 41 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and to set him at liberty.

For Petitioner : Mr. H.Maniyannan

For Respondents : Mr. R.Prathap Kumar, APP

O R D E R

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

The second respondent, Commissioner of Police, Greater Chennai, clamped an order of detention on 17.01.2018 as against Dakshana @ Dakshanamoorthy, S/o. Varathan, Male, aged about 41 years, as the said authority arrived at the subjective satisfaction that the said detinue is a 'Goonda' and he has to be detained under the provisions of the 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 wife of the detenu has come forward with the present Habeas Corpus Petition.

3. Heard Mr.H.Manivannan, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional 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.

4.1. The learned Additional Public Prosecutor appearing for the respondents submitted that there is a delay of 25 days only, in considering the representation and it in no way vitiates the order of detention.

4.2. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the delay.

5. In the case of 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.

8. On this short ground, the order of detention is quashed.

The habeas corpus petition is allowed.

9. At this juncture, the learned counsel appearing for the petitioner submitted that the detainee has been shifted to Central Prison at Vellore from Central Prison, Puzhal, Chennai, and therefore, a direction may be issued to the Superintendent of Prisons, Central Prison, Vellore, to release the petitioner.

10. In view of the said submission, the detainee, Dakshana @ Dakshanamoorthy, S/o. Varathan, Male, aged about 41 years, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case, by the Superintendent of Prisons, Central Prison, Vellore.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Secretary to Govt., State of Tamil Nadu, Home, Prohibition and Excise Department, Fort St. George, Chennai - 9
2. The Commissioner of Police, Chennai Police, Vepery, Chennai - 7
3. The Public Prosecutor, Madras High Court, Chennai - 104
4. The Superintendent of Prisons, Central Prison, Vellore.
5. The Joint Secretary to Government, Public (Law & Order) Fort St.George, Channai-9.

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GP(CO)
CS/13/07/18