

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

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

H.C.P.No.1137 of 2018

Mumtaj

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary of Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-600 009.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent,
Central Prison, Salem-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 C.M.P.NO.25/GOONDA/SALEM CITY/2018 dated, 28.05.2018 passed by the 2nd respondent and to quash the same and also to direct the detenu AFSAL @ KATCHA, S/O.BASHA, who is presently detained in the Central Prison, Salem to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.B.Vasudevan
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 C.M.P.No.25/Goonda/Salem City/2018 dated 28.05.2018, whereby the detenu, by name, Afsal @ Katcha, son of Basha, aged about 26 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 & Cr.No.	Section of Law
1.	Veeranam Police Station Crime No.311/2017	379 IPC
2.	Kannankurichi Police Station Crime No.416/2017	379 IPC
3.	Namakkal Police Station Crime No.348/2018	379 IPC
4.	Ammapet Police Station Crime No.308/2018	379 IPC

The ground case has been registered against the detenu in Cr.No.308/2018 on the file of Inspector of Police, Ammapet Police Station, for offences u/s 341, 392 r/w 397, 506(ii) IPC. The detention order has been passed by second respondent in C.M.P.No.25/Goonda/Salem City/2018.

3. We have heard learned counsel for petitioner and the learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

4. 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.

5. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.308/2018 on 25.04.2018; whereas the detention order was passed on 28.05.2018, i.e. Nearly after a lapse of 33 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). Hence, on the above grounds, the detention order is liable to be set aside.

6. Further, the Grounds of Detention would reveal that a ground case was registered against him in Cr.No.308/2018 for offences u/s 341, 392 r/w 397, 506(ii) IPC. Admittedly, the detenu has not moved any bail application in the ground case. Therefore, the probability of release of the petitioner imminently does not arise. Hence, we are inclined to set aside the detention order. Though the detaining authority has made reliance on similar case, in which an accused was granted bail,

the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind. It is to be noted that the detenu was arrested in the ground case in Cr.No.308/2018 on 25.04.2018, whereas the detention order was passed on 28.05.2018, i.e. after a lapse of 33 days. This inordinate delay in passing of detention order would vitiate the same. 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.

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....."

7. 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.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.25/Goonda/Salem City/2018 dated 28.05.2018, passed by the second respondent is set aside. The detenu, namely, Afsal @ Katcha, son of Basha, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.B.Vasudevan, Advocate SR.No.72105

H.C.P.No.1137 of 2018

GMV (13/11/2018)

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