

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1809 of 2018

M.Muruganandam
S/o.Muthusamy

... Petitioner

-vs-

1.The State of Tamil Nadu,
represented by
The Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600007.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the entire records relating to the detention order passed in Memo BCDFGISSSV No.706/2018 dated 14.08.2018 by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's wife Tmt.Sushmitha Priya W/o.M.Muruganandam, Female, Hindu, aged about 45 years, the detinue, now confined at Special Central Prison for Women, Puzhal, Chennai, under Section 2(f) of the Tamil Nadu Act 14 of 1982 before this Court and set the petitioner's wife Tmt.Sushmitha Priya W/o.M.Muruganandam, Female, Hindu, aged about 45 years, the detinue herein set her at liberty.

For Petitioner : Mr.N.R.Elango, senior counsel
for Mr.Raj Tilak
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 is the husband of the detinue Sushmitha Priya W/o.Muruganandam, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second

respondent passed in BCDFGISSSV No.706/2018 dated 14.08.2018.

2. The alleged ground case has been registered against the detinue in Crime No.806 of 2018 on the file of J-5 Shastri Nagar Police Station for offence under Section 302 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Learned counsel for petitioner submits that the detinue was arrested on 05.07.2018 in respect of the ground case and the order of detention came to be passed on 14.08.2018. A period of more than a month had lapsed between the date of arrest of the detinue 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. We took pains to place on record our displeasure. We would state that the fact of passing detention orders, is very much after the date of arrest and that the period of detention suffered by the detinue is extended at the instance of the detaining authority. For instance, if a Habeas Corpus Petition challenging an order of detention in the normal course, comes up within 4/5 months of the date of filing thereof, this Court would be inclined to allow the same. The actual period of detention suffered adds up to the period post detention as also the period pre-detention. Such is not a desirable position. Given such reasoning, this Court is inclined to take up Habeas Corpus Petition for final disposal, challenging detention orders, where the same have been passed one month after the date of arrest i.e., where the live link between the need to pass the detention order and the passing thereof, is snapped.

6. In the decision relied upon by learned senior 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 detainee Sushmitha Priya W/o.Muruganandam in BCDFGISSSV No.706/2018 dated 14.08.2018 is quashed. The above named detainee is ordered to be set at liberty forthwith, unless her custody is required in connection with any other case.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gm

To

1.The Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600007.

WEB COPY

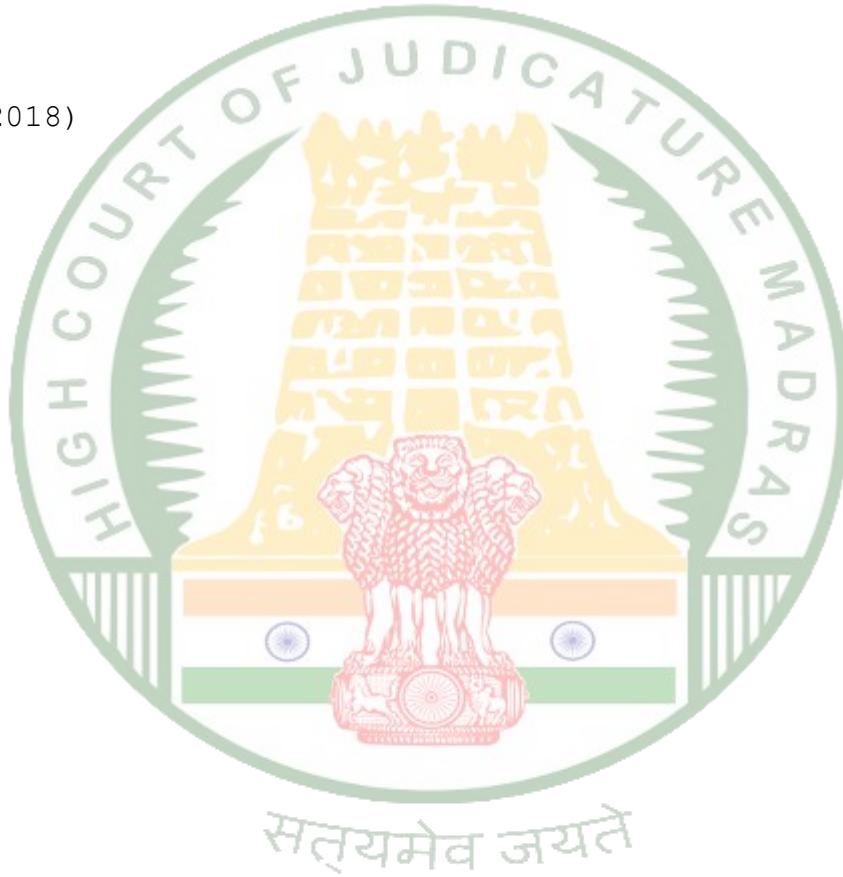
3. The Joint Secretary to Government,
Public (law & Order), Fort Saint George,
chennai 9

4.The Superintendent of Special Prison for Women,
Puzhal,
Chennai.

5.The Public Prosecutor
High Court, Chennai.

H.C.P.No.1809 of 2018

GN(27/09/2018)



WEB COPY