

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.06.2018

CORAM:

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

Habeas Corpus Petition No.221 of 2018

Visalachi .. Petitioner/Daughter of detenue  
- Vs -

1. The State of Tamil Nadu,  
Rep. by its Secretary to the Government,  
Home, Prohibition & Excise (XVI) Department,  
Fort St. George, Secretariat, Chennai 600 009
2. The Commissioner of Police,  
Detaining Authority, Salem City, Salem District
3. The Sponsoring Authority, Inspector of Police,  
Annadanapatty Police Station,  
Salem City, Salem District .. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in CMP No.95/D.O./Salem City/2017, dated 30.12.2017 (T.P.D.A.No.15) detaining the detenu-Tmt.Tamilarasi, W/o.late Pachamuthu, aged about 42 years, under Tamil Nadu Act 14/1982, as a drug offender at Special Prison for Women, Coimbatore, and to set-aside the same and set the detenu at liberty forthwith.

For Petitioner : Mr. P.V.Selvarajan, for,  
Mr. R.Aranganathan  
For Respondents: Mr. R.Prathap Kumar, APP  
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ORDER

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

The second respondent, Commissioner of Police, Salem City, clamped an order of detention on 30.12.2017 as against Tmt.Tamilarasi, W/o.late Pachamuthu, aged about 42 years, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Drug Offender' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing her from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the daughter of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.P.V.Selvarajan, 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 14 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 reason for 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- Tmt.Tamilarasi, W/o.late Pachamuthu, aged about 42 years, now confined at Special Prison for Women, Coimbatore, is ordered to be set at liberty forthwith, unless her custody is otherwise required in any other case.

Sd/-  
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

srk

To

1. THE SECRETARY TO THE GOVERNMENT,  
HOME, PROHIBITION & EXCISE (XVI) DEPARTMENT,  
FORT ST. GEORGE, SECRETARIAT, CHENNAI 600 009
2. THE COMMISSIONER OF POLICE,  
DETAINING AUTHORITY, SALEM CITY, SALEM DISTRICT
3. THE SPONSORING AUTHORITY, INSPECTOR OF POLICE,  
ANNADANAPATTY POLICE STATION,  
SALEM CITY, SALEM DISTRICT
4. THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS
5. THE JOINT SECRETARY TO GOVERNMENT,  
PUBLIC (LAW & ORDER), FORT SAINT GEORGE,  
CHENNAI 9.
6. THE SUPERINTENDENT, CENTRAL PRISON,  
SPECIAL PRISON, FOR WOMEN, COIMBATORE.

+1cc to Mr.R.ARANGANATHAN, Advocate, S.R.No. 37742

H.C.P.No.221 of 2018

CA(CO)  
TR(03/07/2018)