

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 252 OF 2018

Pooja ... Petitioner/Wife of Detenue

- Vs -

1. The State of Tamil Nadu
rep. By its Prl. Secretary
Home, Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.
 2. The Commissioner of Police
Greater Chennai
Vepery, Chennai.
- ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in Memo No.03/BCDFGISSSV/2018 dated 4.1.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu, Ravindra Kumar Sharma, S/o Gopal Sharma, aged about 23 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. Kingston Jerald

For Respondents: Mr. R.Prathap Kumar, APP

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

The second respondent, clamped an order of detention on 4.1.2018 as against Ravindra Kumar Sharma, S/o Gopal Sharma, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Sexual Offender' 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 petitioner has come forward with the present habeas corpus petition.

3. Heard Mr.Kingston Gerald, 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 submitted that though there is only a delay of 15 days in considering the representation, but the said delay, 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, Ravindra Kumar Sharma, S/o Gopal Sharma, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

GLN

To

1. The Principal Secretary
Home, Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai.
3. The Superintendent
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government
Public(Law and order)
Department, Fort. St. George
Chennai 9.
5. The Public Prosecutor
High Court, Madras 104.

सत्यमेव जयते

H.C.P. NO. 252 OF 2018

SP(24/07/2018)

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