

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.06.2018

CORAM

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

Habeas Corpus Petition No.294 of 2018

Thiru I.Jones .. Petitioner
/ Father of the detainee
- Vs -

1. The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai
2. The Secretary, Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat, Fort St. George, Chennai 600 009
3. The Superintendent, Central Prison,
Puzhal, Chennai .. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in No.52/BCDFGISSSV/2018, dated 02.02.2018 on the file of the first respondent herein and set aside the same and direct the respondents to produce the detainee, Suresh Paul, aged 35 years, S/o.Jones, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. D.Selvam, for,
Mr.K.Ravichandran

For Respondents: Mr. R.Prathap Kumar,
Additional Public Prosecutor

O R D E R

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

The first respondent, the Commissioner of Police, Egmore, Chennai, clamped an order of detention on 02.02.2018 as against the detainee, Suresh Paul, aged 35 years, S/o.Jones, as the said authority arrived at the subjective satisfaction that the said detainee 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 father of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.D.Selvam, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

4. It is contended by the learned counsel appearing for the petitioner that even though the detenu is an offender under Section 302 IPC, this detention was passed only after the two months of the Investigating Officer filing his final report.

5. A perusal of the order passed by the detaining authority would go to show that the detenu is likely to come out on bail, but it is not mentioned as to whether the detenu has filed any bail application.

6. The learned counsel appearing for the petitioner would state that the accused did not file any bail application at all and therefore, without the subjective satisfaction, the detaining authority has passed this order of detention.

7. It is contended by the learned counsel appearing for the petitioner that there is a delay in considering the representation and this has rendered the detention illegal.

7.1. But, the learned Additional Public Prosecutor appearing for the respondents submitted that there is only a delay of six days and it in no way vitiates the order of detention.

7.2. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the delay for even six days. Moreover, the reply to the representation made is not available on record.

8. In the detention order, it is stated that because of the communal problems, there is likelihood of the disturbance of the public peace. It is also to be noted that the detention order has been passed not immediately after the occurrence, but after the filing of the final report.

9. 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]."

10. 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 also fatal to the order of detention and this has rendered the detention illegal.

11. Under the stated circumstances, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Suresh Paul, aged 35 years, S/o.Jones, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/--

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Commissioner of Police,
Office of the Commissioner of Police, Egmore, Chennai
2. The Secretary, Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat, Fort St. George, Chennai 600 009
3. The Public Prosecutor, Madras High Court, Chennai - 104
4. The Superintendent of Prisons, Central Prison, Puzhal,
Chennai.
5. The Joint Secretary
Public (Law & order) Department,
Fort St. George, Chennai-9

+1cc to Mr.R.Thamaraiselvan, Advocate Sr.No.39404

AK(CO)

sm:13.7.2018

H.C.P.No.294 of 2018