

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.06.2018

CORAM

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

H.C.P. NO. 298 OF 2018

Bhavani

.. Petitioner/Sister of
the Detenu

- Vs -

1. The State of Tamil Nadu, rep. By
Secretary to Government
Home, Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.

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

.. Respondents

Prayer:-

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus calling for the records pertaining to the order of detention passed in No.42/BCDFGISSSV/2018 dated 29.1.2018, passed by the 2nd respondent and set aside the same and direct the respondents to produce the detenu, Julie @ Arun Kumar, S/o Manohar, aged about 26 years, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. K.Thenrajan

For Respondents : Mr. R.Prathap Kumar, APP

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

The second respondent, Commissioner of Police, Greater Chennai, clamped an order of detention on Julie @ Arun Kumar, S/o Manohar, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' 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. Thenrajan, learned counsel appearing for the petitioner and Mr. R. Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. It is stated by the learned counsel for the petitioner that the detenu was taken into custody with respect to a case originally registered u/s 307 IPC, which was subsequently altered to Section 302 IPC and in respect of which he has been in custody since 29.1.2018. Learned counsel for the petitioner further submits that subsequent to the arrest in the above case, confession has been recorded from him and on the basis of the said confession, another case has been registered u/s 384 and 506 (2) IPC, though he has not been involved in either of those two cases. It is further submitted by the learned counsel appearing for the petitioner that no bail application has been filed in respect of the adverse case as well as the ground case, but the detaining authority has referred to the bail granted in some other case to detain him. It is further submitted that there is a delay of 14 days in considering the representation submitted by him, which has rendered the detention illegal.

5. Learned Addl. Public Prosecutor appearing for the respondents submitted that though there is a delay of 14 days in considering the representation submitted by the detenu, 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.

6. 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]."

7. In view of the above proposition, without advertng to any of the grounds raised in the present petition, on the ground that the delay in considering the representation submitted by the petitioner having not been explained properly, the same has vitiated the order of detention. The delay is fatal to the order of detention and this has rendered the detention illegal.

8. On this short ground, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Julie @ Arun Kumar, S/o Manohar, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Government of Tamil Nadu
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 & Order)
Fort St.George, Chennai-9
5. The Public Prosecutor,
High Court, Madras-104.

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MR(CO)
CS/16/07/18