

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. 304 OF 2018

V.Anthony Muthu ... Petitioner/Father of the detenu

- Vs -

1. The State of Tamil Nadu
rep. By Secretary to Govt.
Home, Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Greater Chennai Police
The Office of the Commissioner
of Police (Goondas Section)
Vepery, Chennai - 600 007. ... Respondents

Prayer:

Habeas Corpus Petition filed Under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus calling for the records relating to the impugned detention order in BCDFGISSSV No.786/2017 dated 22.12.2017 on the file of the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenu Anthony David Jawahar, S/o Anthony Muthu, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. Kingsly Solomon J

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 22.12.2017 as against Anthony David Jawahar, S/o Anthony Muthu, 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 father of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.Kingsly Solomon, 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 though there is only a delay of 7 days and 6 days in two spells, however, 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. Learned counsel for the petitioner also placed reliance the order passed by the Division Bench of this Court pertaining to the co-accused in H.C.P. No.202 of 2018 dated 28.3.2018 (V.Ambika - Vs - The Commissioner of Police) and submitted that the case was allowed by the Division Bench on account of procedural lapses in considering the representation belatedly.

7. 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. Further, the detention of the co-accused having been already quashed by this Court, the case of the petitioner also deserves to be sustained.

8. Accordingly, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Anthony David Jawahar, S/o Anthony Muthu, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-

Assistant Registrar(CS V)

//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 Police
The Office of the Commissioner
of Police (Goondas Section)
Vepery, Chennai - 600 007.

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.

+1cc to Mr. Kingsly Solomon J, Advocate sr.no.40494

H.C.P. NO.304 OF 2018

nr 16/07/2018