

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

CORAM

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

Habeas Corpus Petition No.311 of 2018

Fathima ... Petitioner
/ Sister of the detenue

- Vs -

1. State of Tamilnadu,
Rep. By the Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai 600 009

2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007. ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the detention order in Memo No.35/BCDFGISSSV/2018 dated 29.01.2018 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's brother Thiru.Umar @ Umar Basha S/o.Ajeez, aged about 27 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Court and set aside the petitioner's brother Thiru Umar @ Umar Basha S/o.Ajeez, aged about 27 years the detenue herein at liberty.

For Petitioner : Mr. S.Senthil Vel

For Respondents: Mr. R.Prathap Kumar, APP

- - -

O R D E R

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

The second respondent herein clamped an order of detention on 29.01.2018 as against Umar @ Umar Basha S/o.Ajeez, aged about 27 years, as the said authority arrived at the subjective satisfaction that the said detenue 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 sister of the detenu has come forward with the present Habeas Corpus Petition.

3. Heard Mr.S.Senthil Vel, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

4. It is contended that there is a delay of 15 days in considering the representation and this has rendered the detention illegal.

4.1. The learned Additional Public Prosecutor appearing for the respondents submitted that there is a delay of 15 days only, in considering the representation and it in no way vitiates the order of detention.

4.2. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the delay.

5. 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]."

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 detainee, Umar @ Umar Basha S/o.Ajeez, aged about 27 years, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

ia/srk
To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai 600 009
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (law & Order),
fort saint george, chennai 9
5. The Public Prosecutor,
Madras High Court, Chennai - 104.

H.C.P.No.311 of 2018

GJ(CO)
TR(25/07/2018)

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