

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.07.2018
CORAM

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

H.C.P. NO. 320 OF 2018

Anees Fathima

.. Petitioner

- Vs -

1. The Secretary to Government
Home, Prohibition & Excise Dept.
Secretariat, Fort St. George
Chennai 600 009.

2. The Commissioner of Police/
Detaining Authority
City Police Office, Huzur Road
Coimbatore City, Coimbatore - 18.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records pertaining to the detention order made in C. No.21/G/IS/2018 dated 10.2.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu, A.Shahjahan, S/o Amanaulah, aged about 31 years, now confined at Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. W.Camyles Gandhi

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The 2nd respondent, clamped an order of detention on 10.02.2018 as against Shahjahan, S/o Amanaulan, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Drug 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 has come forward with the present habeas corpus petition.

3. Heard Mr.Camyles Gandhi, learned counsel appearing for the petitioner, 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 a delay of 11 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, A. Shahjahan, S/o Amanullah, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

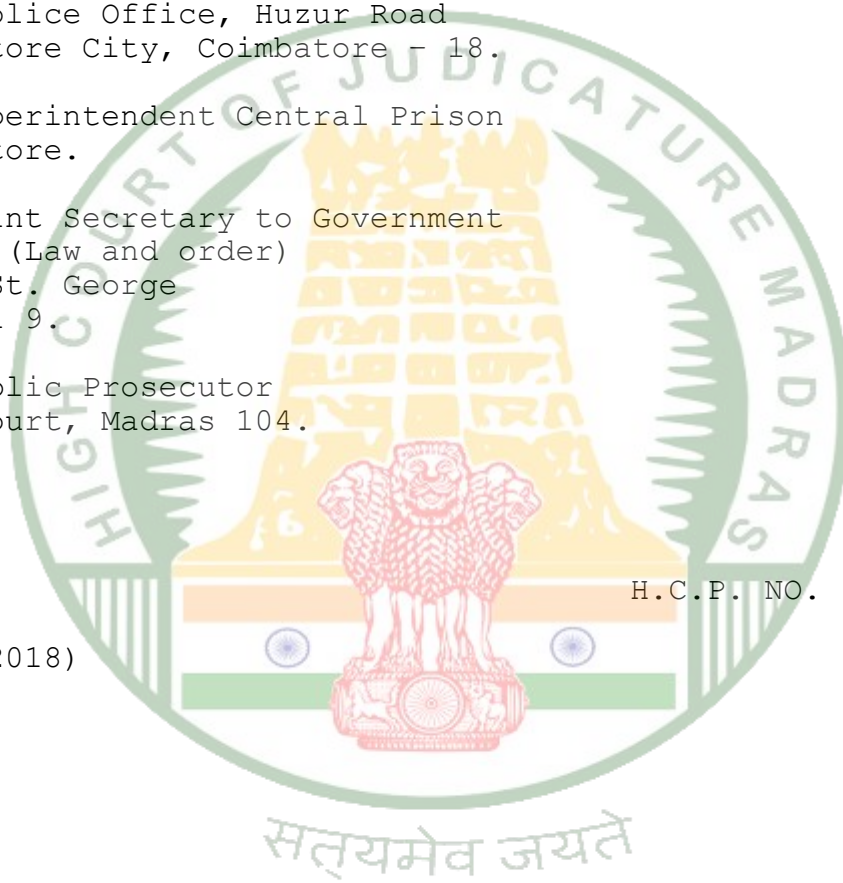
GLN

To

1. The Secretary to Government
Home, Prohibition & Excise Dept.
Secretariat, Fort St. George
Chennai 600 009.
2. The Commissioner of Police/
Detaining Authority
City Police Office, Huzur Road
Coimbatore City, Coimbatore - 18.
3. The Superintendent Central Prison
Coimbatore.
4. The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.
5. The Public Prosecutor
High Court, Madras 104.

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SP(09/08/2018)



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