

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.06.2018

CORAM

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

H.C.P.No.326 of 2018

Dhanasekar

.. Petitioner

- Vs -

1. State of Tamil Nadu,
Rep. by the Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George, Chennai.

2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records in Memo No.710/BCDFGIISSSV/2017 passed by the 2nd respondent on 13.11.2017, set aside the same and direct the respondents to produce the detenu Dhanasekar, Son of Balakrishnan, aged about 38 years, presently confined in the Central Prison, Puzhal-II, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.J.Stalin

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 13.11.2017 as against Dhanasekar, S/o.Balakrishnan, 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.

2. Challenging the order of detention, the detenu has filed the present habeas corpus petition.

3. Heard Mr.J.Stalin, 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 there is only a delay of 13 days and it 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, Dhanasekar, S/o. Balakrishnan, 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

ogy

To

1. The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George,
Chennai.
2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.
3. The Superintendent of Police,
Central Prison, Puzhal-II, Chennai.
4. The Joint secretary to Govt.
public (Law and Order),
Fort st.George
chennai 09.
5. The Public Prosecutor, High Court, Madras.

H.C.P.No.326 of 2018

BS (CO)
ASK(11/07/2018)



WEB COPY