

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.06.2018

CORAM

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

H.C.P. NO. 338 OF 2018

R.Sivapragasam

.. Petitioner

- Vs -

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

2. The District Collector and
District Magistrate
Coimbatore District
Coimbatore.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in Cr.M.P. No.13/G/2017/E1 dated 26.07.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu, Venkatesan, S/o (Late) Dhandapani, aged about 52 years, now confined at Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. D.Kamal Kumar

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The second respondent, clamped an order of detention on 26.10.2017 as against Venkatesan, S/o Late Dhandapani, 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 friend of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.Kamal Kumar, 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 submitted that though there is only a delay of 13 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, Venkatesan, S/o Late Dhandapani, 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
Prohibition & Excise Dept.
Secretariat, Fort St. George
Chennai 600 009.
2. The District Collector and
District Magistrate
Coimbatore District
Coimbatore.
3. The Superintendent, Central prison,
Coimbatore.
4. The Joint Secretary to Government,
Public (law & Order), Fort Saint George,
Chennai 9
5. The Public Prosecutor,
High Court, Madras 104.

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TR(13/07/2018)

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