

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.357 of 2018

Malathi

.. Petitioner

- Vs -

1. The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.

2. District Magistrate and
District Collector,
Salem District.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent dated 05.02.2018 in C.M.P.No.7/B.L.A./C2/2018 against the petitioner's brother Brabhakaran, aged 30 years, S/o.Selvam, who is confined at Central Prison, Special Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court.

For Petitioner : Mr.D.Balaji

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The second respondent, District Magistrate and District Collector, Salem District, clamped an order of detention on 05.02.2018 as against Brabhakaran, S/o.Selvam, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Bootlegger' 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 sister of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.D.Balaji, 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 27 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 Brabhagaran, S/o.Selvam, 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

ogy

To

1. The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.
2. District Magistrate and
District Collector,
Salem District.
3. The Superintendent of Police,
Central Prison, Special Prison,
Salem.
4. The Joint Secretary to Government,
Public (Law and Order), Fort St.George,
Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.357 of 2018

GP(CO)
GN(27/07/2018)

WEB COPY