

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.07.2018

CORAM

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

H.C.P. NO. 372 OF 2018

Sathasivam .. Petitioner/Son of the detenu

- Vs -

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

2. The District Collector &  
District Magistrate  
Kancheepuram District  
Kancheepuram.

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in BCDFGISSSV No.10/2018 dated 10.02.2018 on the file of the 2<sup>nd</sup> respondent herein and set aside the same as illegal and direct the respondents to produce the detenu, Lalitha, W/o Sumankumar, aged about 48 years, now confined at Special Prison for Women, Puzhal, Chennai, before this Hon'ble Court and set her at liberty.

For Petitioner : Mr. A.Murugavel

For Respondents: Mr. R.Prathap Kumar, APP

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

The second respondent, clamped an order of detention on 10.02.2018 as against Lalitha, W/o Sumankumar, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Bootlegger' and she has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing her

from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the petitioner has come forward with the present habeas corpus petition.

3. Heard Mr.Murugavel, 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 8 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, Lalitha,

W/o Sumankumar, is ordered to be set at liberty forthwith,  
unless her custody is otherwise required in any other case.

Sd/-  
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

GLN

To

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

2. The District Collector &  
District Magistrate  
Kancheepuram District  
Kancheepuram.

3. The Superintendent,  
Special Prison for Women,  
Puzhal, Chennai.

(In duplicate for communication to Detenue)

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. 372 OF 2018

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NMI (CO)  
GN (25/07/2018)