

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.07.2018

CORAM

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

H.C.P. NO. 389 OF 2018

Divya

.. Petitioner

- Vs -

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

2. The Commissioner of Police
Salem City

... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in C.M.P.No.2/Goonda/Salem City/2018 dated 05.02.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Suresh S/o Mohan, now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : M/s.R.Subhadra Devi
For Respondents : Mr. R.Prathap Kumar,
Addl.Public Prosecutor

ORDER

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

The 2nd respondent, clamped an order of detention on 05.02.2018 on Suresh S/o Mohan, 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 petitioner has come forward with the present habeas corpus petition.

3. Heard Ms.Subhadra Devi, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. It is the contention of the learned counsel that there is an undue delay in considering the representation submitted for revoking the order of detention and the said delay has rendered the detention illegal. Learned Addl. Public Prosecutor appearing for the respondents submitted that though there is a delay of 16 days in considering the representation submitted by the detenu, however, the same does not vitiate the order of detention. Though such a contention is advanced, however, proper and cogent reason or explanation has been adduced by the respondents to explain the delay.

5. The Supreme Court, in Solomon Castro - Vs - State of Kerala, (2000 (9) SCC 561), while dealing with the delay in considering the representation, held as under :-

"4. It has been repeatedly stated by this Court that representation of the detenu is required to be considered and disposed of as expeditiously as possible by the Government. In Rajammal v. State of T.N. [(1999) 1 SCC 417 : 1999 SCC (Cri) 93] this Court again reiterated the constitutional obligation of the Government to consider the representation forwarded by the detenu without delay and observed that even though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. If there is delay in considering the representation the court can consider whether the delay was occasioned due to permissible reasons or unavoidable causes."

6. The above ratio laid down by the Supreme Court clearly reveals that where there is no proper explanation explaining the reason for the delay, the said delay vitiates the order of detention. In the present case, a perusal of the records reveal that no proper explanation has been given by the respondents for the delay. Therefore, the delay in considering the representation submitted by the petitioner, which has not been explained properly vitiates 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, Suresh S/o Mohan, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

KST

//True Copy//

Sd/-
Assistant Registrar (CS-v)

Sub Assistant Registrar

To

1. The Secretary to Government
Dept. of Home, Prohibition & Excise
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Salem.
3. The Superintendent Central Prison,
Salem.
4. The Joint Secretary to Govt. public (law and order)
Fort. St. George, Chennai.
5. The public prosecutor
High court, Madras.

RJ(CO)
ASK(16/08/2018)

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