

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P.No.395 of 2018

Vela @ Velankanni

... Petitioner

versus

1. The State of Tamilnadu,
Rep. by the Principal Secretary
to Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai.

... Respondents

Habeas Corpus Petition filed under Article 226 of Constitution of India, for the issuance of Writ of Habeas Corpus, calling for records relating to the detention order passed by the second respondent dated 08.01.2018 in Memo No.07/BCDFGISSSV/2018 against the petitioner/Detenu Vela @ Velankanni, S/o.Johnmoses, is now confined at Central Prison, Puzhal, Chennai - 66 and set aside the same and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.V.Perarasu

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

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

The second respondent, Commissioner of Police, Greater Chennai, clamped an order of detention on 08.01.2018 as against Vela @ Velankanni, S/o.Johnmoses, 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/detenu has filed the present Habeas Corpus Petition.

3. Heard Mr.V.Perarasu, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. It is contended by the learned counsel for the petitioner that there is a delay in considering the representation and this has rendered the detention illegal. Learned Addl. Public Prosecutor appearing for the respondents submits that though there is a delay of 13 days, 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.

8. On the above ground alone, the order of detention is quashed. The habeas corpus petition is allowed. The detenu,

Vela @ Velankanni, S/o.Johnmoses, 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

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To

1. The Principal Secretary
to Government,
Home, Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai.
3. The Superintendent,
Central Prison, Puzhal,
Chennai - 66.
4. The Joint Secretary to Government,
Public Law and order,
Fort ST.George, Chennai.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Perarasu, Advocate SR.No.44353

H.C.P.No.395 of 2018

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

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