

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P.No.397 of 2018

Arun @ Arun Kumar

... Petitioner

versus

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

2. District Collector &
District Magistrate,
Kancheepuram District,
Kancheepuram.

... 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 31.01.2018 in BCDFGISSSV No.05/2018 against the petitioner Arun @ Arunkumar, aged 28 years, S/o.Kumar, who is confined at Central Prison, Puzhal - II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

For Respondents: Mr.R.Prathap Kumar, APP

ORDER

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

The second respondent, District Collector and District Magistrate, Kanchipuram District, clamped an order of detention on 31.01.2018 as against Arun @ Arunkumar, S/o.Kumar, 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 detenu has filed the present Habeas Corpus Petition.

3. Heard Mr.S.Senthil Vel, 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 an inordinate 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 an inordinate delay, but 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, Arun @ Arunkumar, S/o.Kumar, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/--
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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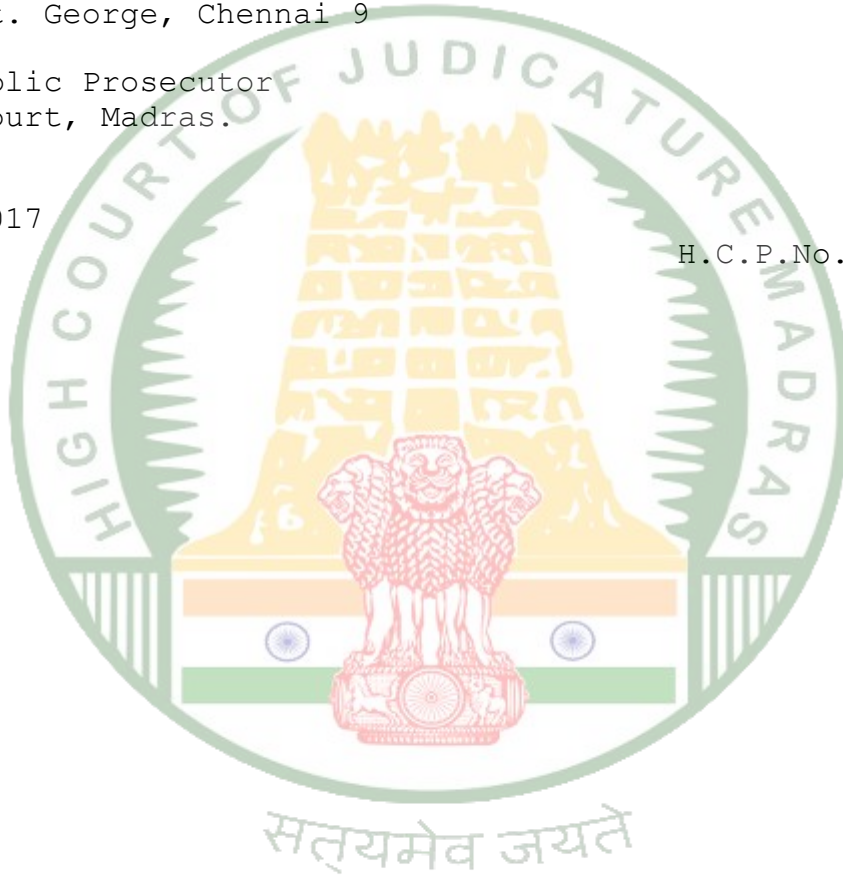
To

1. The Secretary to the Government,
<https://hcservices.ecourts.gov.in/hcscservices/>
Home Prohibition and Excise Dept.,
Secretariat,
Chennai - 600 009.

2. District Collector &
District Magistrate,
Kancheepuram District,
Kancheepuram.
3. The Superintendent,
Central Prison,
Puzhal - II, Chennai.
4. The Joint Secretary to Government
(Public Law & Order)
Fort St. George, Chennai 9
5. The Public Prosecutor
High Court, Madras.

GJ(CO)
sm:26.7.2017

H.C.P.No.397 of 2018



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