

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. 398 OF 2018

B.Durga

.. Petitioner

- Vs -

1. State, rep. By
Secretary to Government
Home, Prohibition & Excise Dept.
Secretariat, Chennai 600 009.

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

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in BCDFGISSSV No.11/2018 dated 14.2.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detainee Priya, W/o Karthik, aged 25 years, now confined at Special Prison for Women, Puzhal, Chennai, before this Hon'ble Court and set her at liberty.

For Petitioner : Mr. Swamidoss Manokaran

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The 2nd respondent, clamped an order of detention on 14.02.2018 as against Priya, W/o Karthik, as the said authority arrived at the subjective satisfaction that the said detainee 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.Swamidoss Manokaran, 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 though there is a delay of 12 days in considering the representation, however, 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, Priya, W/o Karthik, is ordered to be set at liberty forthwith, unless her custody is otherwise required in any other case.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

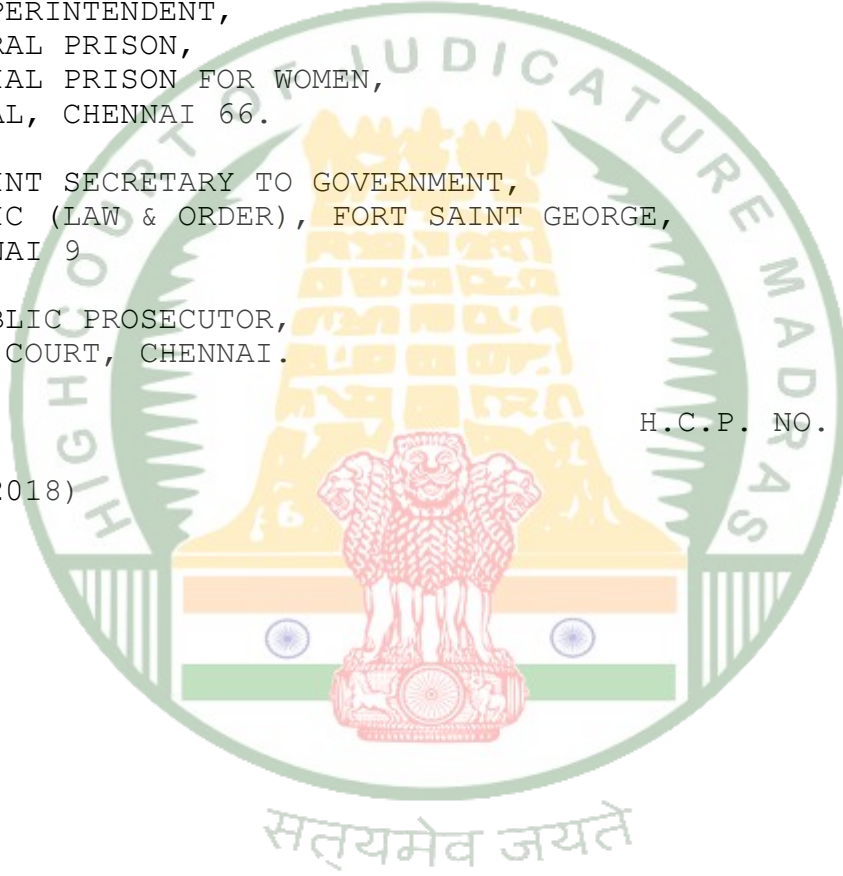
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To

1. SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMIL NADU
HOME, PROHIBITION & EXCISE DEPT.
SECRETARIAT, CHENNAI 600 009.
2. THE DISTRICT COLLECTOR &
DISTRICT MAGISTRATE
KANCHEEPURAM, KANCHEEPURAM DT.
3. THE SUPERINTENDENT,
CENTRAL PRISON,
SPECIAL PRISON FOR WOMEN,
PUZHAL, CHENNAI 66.
4. THE JOINT SECRETARY TO GOVERNMENT,
PUBLIC (LAW & ORDER), FORT SAINT GEORGE,
CHENNAI 9
5. THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI.

H.C.P. NO. 398 OF 2018

NMI (CO)
TR(24/07/2018)



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