

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.07.2018

CORAM

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

H.C.P. NO. 409 OF 2018

Sam Kumar

.. Petitioner

- Vs -

1. State of Tamil Nadu, rep. By
Secretary of State
Home, Prohibition & Excise Dept.
Fort St. George, Chennai - 9.

2. The Commissioner of Police
Poonamallee High Road
Vepery, Chennai 600 007.

.. Respondents

Prayer: Petition filed Habeas Corpus under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus calling for the records on the file of the 2nd respondent passed in detention Memo No.48/BCDFGISSSV/2018 dated 02.02.2018 relating to the detention of Jai @ Jayakumar, S/o Tamilselvam, aged 26 years, lodged in Central Prison, Puzhal, Chennai, and direct the respondents to produce the body of the detenu, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. M.Murali Vinodh

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The present habeas corpus petition has been preferred by the petitioner challenging the detention order dated 02.02.2018 passed by the 2nd respondent in and by which the 2nd respondent detained the Jai @ Jayakumar, S/o Tamilselvam, as a 'Goonda' 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 Mr.Murali Vinodh, 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 a delay of 18 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, Jai @ Jayakumar, S/o Tamilselvam, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Govt.
Home, Prohibition & Excise Dept.
Secretariat, Chennai - 9.
2. The Commissioner of Police
Poonamallee High Road
Vepery, Chennai 600 007.
3. The Superintendent,
Central Prison,
puzhal, chennai.
4. The Joint Secretary to Government,
Public (law & Order), Fort Saint George,
chennai 9
5. The Public prosecutor,
High Court, Madras 104.

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MR(CO)
TR(02/08/2018)

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