

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.07.2018

CORAM

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

H.C.P. NO. 435 of 2018

H.Masha Heera Begum

.. Petitioner

- Vs -

State of Tamil Nadu rep. by

1. The Secretary to Government
Home, Prohibition & Excise Department
St. George Fort,
Chennai 600 009.

2. Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 003.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus calling for the records in detention order passed in No.58/BCDFGISSSV/2018 dated 07.02.2018 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce Shaik Dawood Nazzar, S/o.Noor Mohammed, the detenu herein now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr. M.Anandaraj

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

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

The second respondent herein clamped an order of detention on 07.02.2018 as against the detenu Dawood Nazzar, aged 35 years, S/o.Noor Mohammed, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under the provisions of the 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 wife of the

detenu has come forward with the present Habeas Corpus Petition.

3. It is contended by the learned counsel appearing for the petitioner that there is delay in passing the order of detention. It is the contention of the learned counsel that the order of detention has been passed two months after the arrest of the detenu. However, no explanation is forthcoming for the delay in passing the order of detention.

4. It is further contended by the learned counsel for the petitioner that the detaining authority has stated that there is likelihood of the detenu coming out on bail by filing bail application and has expressed satisfaction to detain the detenu. However, it is submitted by the learned counsel for the petitioner that no bail application has been filed till date and, therefore, the subjective satisfaction arrived at by the detaining authority is vitiated.

5. It is the further submission of the learned counsel for the petitioner that there is a delay in considering the representation, which has not been explained by the respondents and, therefore, the said delay vitiates the order of detention.

6. This Court heard the learned Additional Public Prosecutor appearing for the respondents on the above contentions. Learned Addl. Public Prosecutor submits that though there is a delay of six days in considering the representation, however, the said delay, in no way vitiates the order of detention.

7. A perusal of the documents available on record reveals that though there is a delay of six days in considering the representation, however, no explanation whatsoever has been given by the respondents for the said delay. Further, it is evident from the order of the detention that the detaining authority has arrived at a subjective satisfaction by holding that due to communal problems, there is likelihood of the detenu causing disturbance to public peace. However, no reason whatsoever is available in the order of detention as to the material on which the detaining authority has arrived at the said satisfaction.

8. Be that as it may. In the case of 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]."

9. 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. Therefore, without going into the other contentions raised by the learned counsel for the petitioner, this Court holds that the delay in considering the representation submitted by the petitioner is fatal to the order of detention and this has rendered the detention illegal.

10. Under the stated circumstances, the order of detention is quashed and the habeas corpus petition is allowed. The detenu, Shaik Dawood Nazzar, S/o.Noor Mohammed, confined in Central Prison, Puzhal, Chennai, is ordered to be set at liberty forthwith, unless his custody/detention is otherwise required in connection with any other case.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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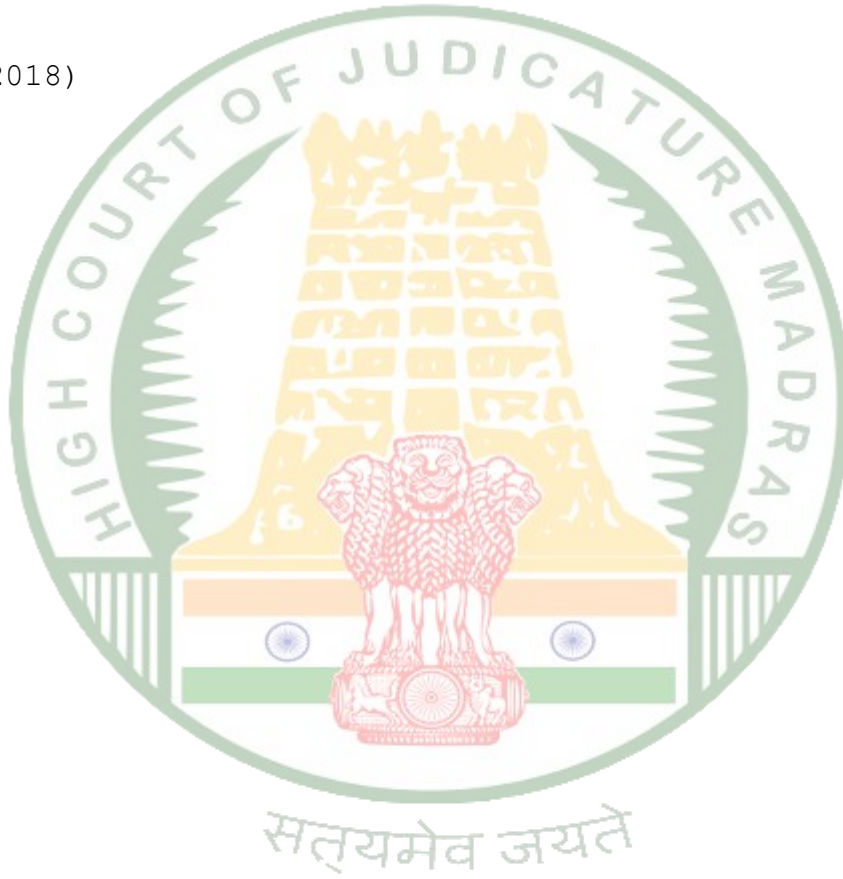
1. The Secretary to Government
Home, Prohibition & Excise Department
St. George Fort,
Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 003.
3. The Superintendent, Central Prison, Puzhal, Chennai
(In duplicate for communication to detenue)

4. The Joint Secretary to government
Public (Law and order)
Fort. St. George
Chennai 9.

5. The Public Prosecutor,
High Court, Madras

H.C.P. NO.435 of 2018

SAI (CO)
SP(12/10/2018)



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