

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM

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

Habeas Corpus Petition No.446 of 2018

G.Keerthana

.. Petitioner
/ Wife of the detenu

- Vs -

1. The State of Tamil Nadu
Rep, by its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai. .. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the entire records connected with the order of the 2nd respondent herein in Memo NO.53/BCDFGISSSV/2018 dated 02.02.2018 and quash the same further directing the respondents to produce the body or person of the detenu, by name, Ganesh alias Ganesan aged about 38 years S/o.Balu, now confined in Central Prison, Puzhal, Chennai before this Cour and set him at liberty.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents : Mr. R.Prathap Kumar, APP

O R D E R

(Order of the Court was made by S.Vimala, J.,)

The second respondent herein clamped an order of detention on 02.02.2018 as against the detenu, Ganesh @ Ganesan S/o.Balu, aged about 38 years, 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. Heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

4. It is contended that there is a delay of 11 days in considering the representation and this has rendered the detention illegal.

4.1. The learned Additional Public Prosecutor appearing for the respondents submitted that there is a delay of 11 days only, in considering the representation and it in no way vitiates the order of detention.

4.2. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the reasons for the delay.

5. 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]."

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, Ganesh @ Ganesan S/o.Balu, aged about 38 years, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai, Vepery,
Chennai - 600 007.
3. The Superintendent of Prisons, Central Prison, Puzhal,
Chennai.
4. The Joint Secretary to Government,
Public (law & Order), Fort Saint George, Chennai 9
5. The Public Prosecutor, Madras High Court, Chennai - 104.

+1cc to Mr.R.C.PAULKANAGARAJ, Advocate, S.R.No.46862

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SV(CO)
TR(23/08/2018)

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