

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. No.2276/2017

Vennila Ferdinand

Petitioner

-VS-

1.State of Tamil Nadu
rep.by its Secretary,
Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai, Commissioner Office
Vepery, Chennai.

3.The Inspector of Police
Central Crime Branch,
Bank Fraud Prevention Wing
Vepery, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention dated 16.11.2017 in detention order Memo NO.723/BCDFGISSSV/2017 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of H.G.Ferdinand @ George Fenandez son of Henry George, Christian, aged about 49 years who is now confined in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.R.Thamaraiselvan
For Respondents : Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court by C.T.SELVAM, J.]

Petitioner, wife of the detenu H.G.Ferdinand @ George Fenandez son of Henry George, aged 49 years, challenges the impugned order of detention, dated 16.11.2017 in Memo NO.723/BCDFGISSSV/2017 detaining her husband as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2 We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority as well as the counter filed by the Additional Commissioner of Police, CCB, Chennai dated 05.02.2018.

3 Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner,

confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention. Further, the detenu was arrested in the ground case on 14.09.2017 ; whereas the Detention order was passed on 16.11.2017, i.e., after a lapse of two months. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court reported in **2005 MLJ (CrL.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another)**. Hence, on the above grounds, the detention order is liable to be set aside.

4 A perusal of the Grounds of Detention would reveal that 2 adverse cases in Cr.Nos.98/2015 and 221/2017 and a ground case in Cr.No.300/2017 came to be registered against the detenu in for offences u/s.420, 465, 468, 471 read with 34 IPC. Admittedly, the bail application filed by the detenu in the ground case before the learned Special Metropolitan Magistrate Court for CCB and CBCID Metro cases, Allikulam, in CrL.MP.3742/2017 was dismissed and the subsequent bail application filed by him in the ground case was pending as on the date of passing of the detention order. Therefore, the likelihood of coming

out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that as the detenu has been granted bail in the 2nd adverse case, there is a likelihood of he getting bail in the ground case also. When a bail application is pending, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere *ipsi dixit*. Hence, on this sole ground, the detention order is liable to be set aside.

5 Further, a perusal of the grounds of detention as well as the detention order passed by the detaining authority would show that the Detention Order was passed on 16.11.2017 ; but a perusal of the grounds of detention, in particular paragraph No.3, it is seen that the detenu was arrested in the ground case as early as on 14.09.2017. This shows an inordinate delay of nearly two months in passing the detention order. There is no explanation forthcoming on the side of the respondents for this inordinate delay in passing the detention order. Learned counsel for the petitioner has rightly placed reliance on the

decision in **Ramesh's case** (cited supra) wherein this Court has held as follows:

"....

3. It is brought to our notice by the learned Government advocate that the analyst report was received on 06.12.2014 and the doctor has issued certificate on 07.12.2014. Even in the counter affidavit filed by the first respondent, it is stated that the sponsoring authority has submitted his affidavit only on 15.01.2015. When the sponsoring authority is in possession of the analyst report and the doctor's report even on 06.12.2014 and 07.12.2014, there is no proper explanation for submitting his affidavit till 15.01.2015 for invoking the provisions of Tamil Nadu Act 14 of 1982. Even thereafter, the impugned detention order was passed only on 27.02.2015, i.e. After five weeks of receipt of the affidavit from the sponsoring authority. Though the detaining authority has filed a counter affidavit, there is no explanation for the undue delay in passing the impugned order.

4. In this regard, learned counsel for the petitioner relied on unreported decision of this Court rendered in H.C.P. No.1149 of 1995, dated 13.12.1995. In similar circumstances, after pointing out the unexplained delay between the date of submission of the affidavit by the sponsoring authority and the detention order, the Division Bench of this Court has concluded thus:

"Such delays tend to have an affect of snapping the link between prejudicial activity and passing of

preventive orders.....”

6 In view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

7 In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his detention is required in connection with any other case.

[C.T.S.,J.] [N.S.K.,J.]
05.02.2018

Internet : Yes
AP

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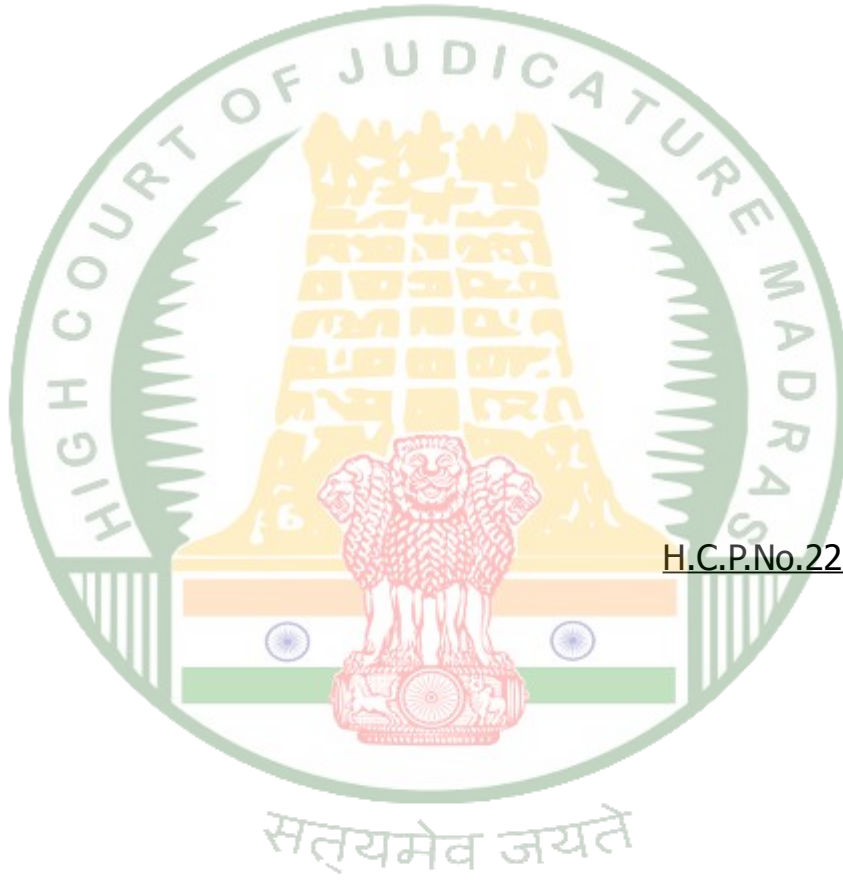
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- 4.The Public Prosecutor
High Court, Madras.
- 5.The Superintendent
Central Prison, Puzhal, Chennai.



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AND
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