

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Habeas Corpus Petition No.462 of 2018

Santhi ... Petitioner
/ Mother of the detenu

Versus

- 1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Krishnagiri District, Kirshnagiri. ... Respondents

Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Habeas Corpus, calling for the records relating to the order passed by the second respondent in S.C.No.11 of 2018 dated 16.02.2018, and to quash the same and to produce the detenu Thiru.Prakash, son of Thiru.Kannan, who is detained in Central Prison, Salem, before this Court and to set him at liberty.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

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 16.02.2018 as against the detenu, Prakash, S/o.Kannan, aged 36 years, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Bootleggers' 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 mother of the detenu has come forward with the present Habeas Corpus Petition.

3. Heard Mr.B.Gopalakrishnan, 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 20 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 20 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, Prakash, S/o.Kannan, aged 36 years, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar
ia/srk

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Krishnagiri District, Kirshnagiri.
- 3.The Superintendent of Prison,
Central Prison, Salem.
4. The Joint Secretary to Government,
Public (law & Order), Fort Saint George,
chennai 9
- 5.The Public Prosecutor,
Madras High Court,
Chennai - 104.

सत्यमेव जयते

H.C.P.No.462 of 2018

mg (CO)
TR(13/08/2018)

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