

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.485 of 2018

Ayisha Fathima

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.
- 3.The Superintendent of Prison,
Central Prison No.2,
Puzhal, Chennai-600 066.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the entire records from the 2nd respondent in connection with order in Memo No.92/BCDFGISSSV/2018 dated 20.2.2018 and quash the same and produce the petitioner's husband namely Abdul Rahim @ Tada Rahim aged 51 years now confined in Central Prison No.2, Puzhal, Chennai-600 066 under the Tamil Nadu Act 14 of 1982 before this Hon'ble Court and set at liberty.

For Petitioner : Mr.P.Pugalenth
For Respondents : Mr..M.Mohamed Riyaz,
Additional Public Prosecutor.

O R D E R

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in No.92/BCDFGISSSV/2018 dated 20.02.2018, whereby the detenu/the husband of the petitioner herein, by name, Abdul Rahim @ Tada Rahim, son of

Abdul Jaffer, aged about 51 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Goonda".

2. The detenu has come to adverse notice in the following cases:-

S.No	Cr.No. & Police Station	Offences
1.	Cr.No.672/2015 D1 Triplicane Police Station	505(i)(b), 505(ii) IPC & 66A of IT Act
2.	Cr.No.1428/2015 D1 Triplicane Police Station	153, 505(i)(b)(c) & 505(2) IPC
3.	Cr.No.1181/2017 R1 Mambalam Police Station	143, 188 & 285 IPC

The ground case has been registered against the detenu in Cr.No.1319/2017 on the file of Sub-Inspector of Police, Law and Order, D1, Triplicane Police Station for offences u/s 147, 341, 323, 364(A), 384 and 506(ii) IPC. The detention order has been passed by Second respondent in No.92/BCDFGISSSV/2018.

3. Though many grounds have been raised in the 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.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.1319/2017 on 12.02.2018 itself and the bail application filed before the Principal District and Sessions Court, Chennai in Cr1.M.P.No.2491/2018 and the same was pending ; whereas the detention order was passed on 20.02.2018, i.e. Nearly after a lapse of 8 days. 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 (Cr1.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another).

5. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he

submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6. We have heard the learned counsel for both sides with regard to the facts.

7. 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 20.02.2018 ; but a perusal of the grounds of detention would show that the bail application filed by the detenu in the ground case before the learned Principal District and Sessions Court, Chennai, was pending as on the date of passing of the detention order. Further, the detenu was arrested in the ground case as early as on 12.02.2018. This shows an inordinate delay of nearly 8 days 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....."

8. 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.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.
- 3.The Superintendent of Prison,
Central Prison No.2,
Puzhal, Chennai-600 066.
- 4.The Public Prosecutor
High Court, Madras
- 5.The Joint Secretary to Government,
Public (Law & order) fort saint George chennai

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RSI (CO)
GSP(04/09/2018)