IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

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

H.C.P.No.1739 of 2018

Ismail

.. Petitioner

Vs.

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

2.The Commissioner of Police/Detaining Authority
Hozur Road,
Coimbatore City,
Coimbatore-18

.. 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, relating to the petitioner's son detention under Tamil Nadu Act of 1982 vide detention order, dated 10.08.2018 on the file of the second respondent herein made in proceedings Memo C.No.87/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely I.Syed Ali @ Nizam, S/o. Ismail, aged 25 years before this Hon'ble High Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

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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 C.No.87/G/IS/2018 dated

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10.08.2018, whereby the detenu, by name, I.Syed Ali @ Nizam, son of Ismail, aged about 25 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.505 of 2018 D-3 Podanur Police Station	457,380 IPC
2.	Cr.No.507 of 2018 D-3 Podanur Police Station	457,380 IPC

The ground case has been registered against the detenu in Cr.No.508 of 2018 on the file of Inspector of Police, D-3 Podanur Police Station for offences u/s 392, r/w 397 IPC. The detention order has been passed by second respondent in C.No.87/G/IS/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.508/2018 on 27.05.2018; whereas the detention order was passed on 10.08.2018, i.e. Nearly after a lapse of 72 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 (Crl.) 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. We took pains to place on record our displeasure. We

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would state that the fact of passing detention orders, is very much after the date of arrest and that the period of detention suffered by the detenu is extended at the instance of the detaining authority. For instance, if a Habeas Corpus Petition challenging an order of detention in the normal course, comes up within 4/5 months of the date of filing thereof, this Court would be inclined to allow the same. The actual period of detention suffered adds up to the period post detention as also the period pre-detention. Such is not a desirable position. Given such reasoning, this Court is inclined to take up Habeas Corpus Petition for final disposal, challenging detention orders, where the same have been passed one month after the date of arrest i.e., where the live link between the need to pass the detention order and the passing thereof, is snapped.

8. 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 10.08.2018. Further, the detenu was arrested in the ground case as early as on 27.05.2018. This shows an inordinate delay of nearly 72 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:

> "...
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> 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.
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> 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

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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....."

9. 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.

10. 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 IX)

//True Copy//

Sub Assistant Registrar

srn/kmi

To

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

2.The Commissioner of Police/
Detaining Authority
Hozur Road,
Coimbatore City,
Coimbatore-18

3.The Superintendent,
Central Prison,
Coimbatore.

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4.The Joint Secretary,
Public (Law & Order)Department,
Secretariat, Chennai-9.

5.The Public prosecutor,
High Court, Madras.

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