

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM:

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

H.C.P.No.555 of 2018

Neelamani
W/o.Gopalakrishnan

... Petitioner

-Vs-

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 03.03.2018, on the file of the second respondent herein made in proceedings Memo C.No.32/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely M.Gopalakrishnan, S/o.Masakonar, aged 28 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(The order of the Court was made by C.T.SELVAM, J)

Petitioner is the wife of the detenu viz., M.Gopalakrishnan S/o.Masakonar, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in C.No.32/G/IS/2018 dated 03.03.2018.

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

Sl.No	Police Station and Crime No.	Sections of Law
1.	Coimbatore city, E-1 Singanallur Police Station, Crime No.152/2017	379 IPC
2.	Coimbatore District, Thudiyalur Police Station, Crime No.107/2017	379 IPC
3.	Coimbatore City, D-3 Podanur Police Station, Crime No.22/2018	379 IPC

The alleged ground case has been registered against the detenu on in Crime No.24 of 2018 on the file of D-3 Podanur Police Station for offence under Section 392 r/w 397 and 506 (ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Learned counsel for petitioner submits that the detenu was arrested on 08.01.2018 in respect of the ground case and the order of detention came to be passed on 03.03.2018. A period of more than 2 months had lapsed between the date of arrest of the detenu and the sponsoring authority recommending his detention. Such long delay stands not explained and hence, the order of detention is liable to be set aside following the order of Division Bench of this Court in Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another [2005 MLJ (Cr1.) 752].

4. We have heard learned Additional Public Prosecutor on the above submissions.

5. In the decision relied upon by learned counsel for petitioner in Ramesh's case (cited supra), 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.....".

Following the principle enunciated in the above said order of the Division Bench of this Court, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu, M.Gopalakrishnan S/o.Masakonar, in C.No.32/G/IS/2018 dated 03.03.2018, is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gm

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
Huzur Road,
Coimbatore City,
Coimbatore - 18.

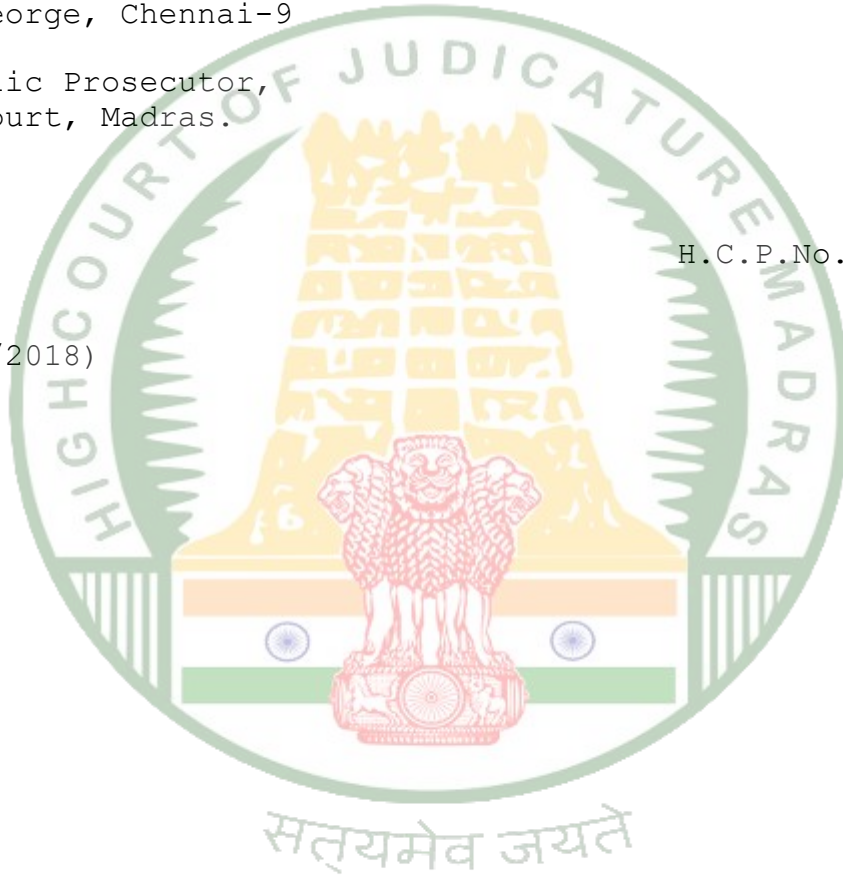
3.The Superintendent,
Central Prison,
Coimbatore.

4.The Joint Secretary to Government,
Public (Law & order)
Fort.St.George, Chennai-9

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.555 of 2018

RGN(CO)
GSP(19/09/2018)



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