

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.1828 of 2018

Sivaneswari ... Petitioner/Wife of the detenu

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,
Huzur Road,
Coimbatore City,
Coimbatore -18.

... Respondents

Prayer: 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 husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 14.08.2018 on the file of the second respondent herein made in proceedings Memo C.No.90/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely S.Dinakaran, S/o. Selvam, aged 33 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.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

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

Petitioner, wife of detenu herein, challenges the impugned order of detention, dated 14.08.2018 in C.No.90/G/IS/2018 detaining him as a "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 The ground case has been registered against the detenu in Cr.No.825/2018 on the file of Sub-Inspector of Police, Law and Order, B-2 R.S.Puram Police Station, Coimbatore City, for offences u/s 364(A) and 395 r/w 397. The detention order has been passed by Second respondent in C.No.90/G/IS/2018.

3 We have heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

4 The learned counsel for the petitioner would submit that the Detaining Authority has not satisfied himself as to the real possibility of the detenu coming out on bail in the ground case as the detenu has never moved any bail applications in the said case. Further, it is contended that the detenu was arrested in the ground case on 20.07.2018; whereas the detention order came to be passed only on 14.08.2018, after a lapse of 24 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). Hence, on the above grounds, the detention order is liable to be set aside.

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 On a perusal of the impugned order of detention, in particular, the Grounds, we find that the Detaining Authority has stated that there was a real possibility of the detenu

coming out on bail in the ground case. Admittedly, at the time of passing the Detention Order, no bail application was filed in the ground case in Cr.No.825/2018. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind. When no bail application is filed, the logical conclusion would be that there is no likelihood of the detenu 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. Therefore, on this ground, the detention order is liable to be set aside.

7 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 14.08.2018; but a perusal of the grounds of detention, in particular paragraph No.5, it is seen that the detenu was arrested in the ground case as early as on 20.07.2018. This shows an inordinate delay of 24 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 In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.90/G/IS/2018 on 14.08.2018 passed by the second respondent is set aside. The detenu, namely S.Dinakaran son of Selvam, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrl/jas

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.

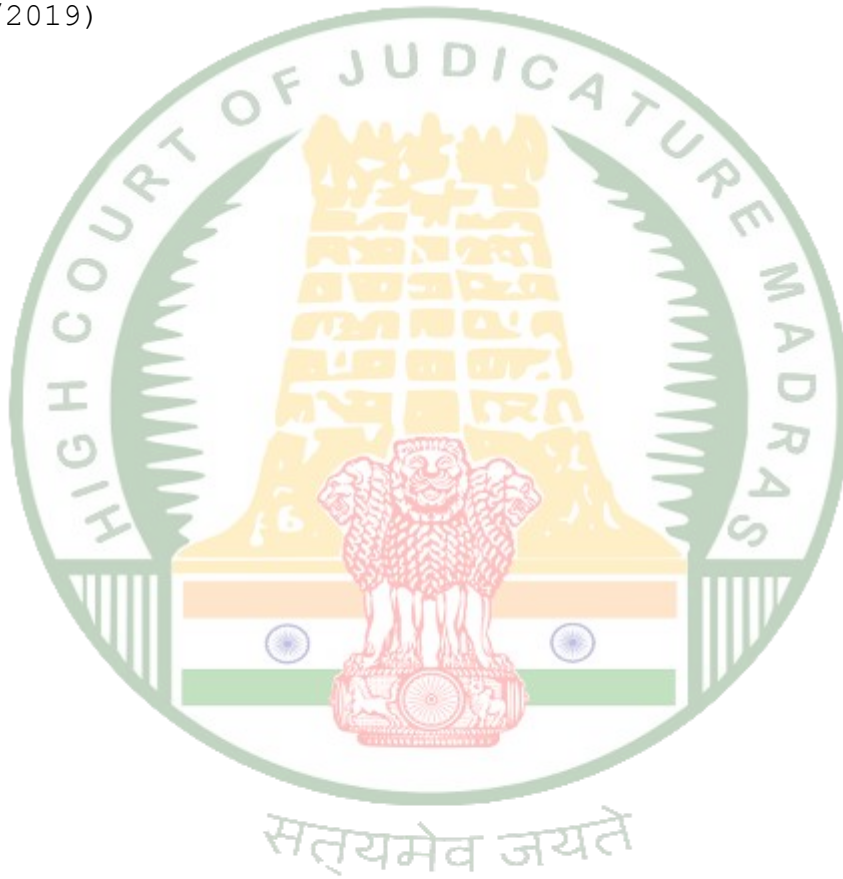
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai - 3.

5. The Public Prosecutor
High Court, Madras.

H.C.P.No.1828 of 2018

GS-II (CO)

RRK (25/01/2019)



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