

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

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

H.C.P.No.1830 of 2018

Ithaya
W/o.Sathishkumar

... Petitioner

-vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu
Fort St. George
Chennai - 600009.

2.The Commissioner of Police
Detaining Authority
Office of the Commissioner of Police
Intelligence Section
Coimbatore City
Coimbatore.

3.The Inspector of Police
Law and Order
B2, R.S.Puram Police Station
Coimbatore City.

4.The Superintendent
Central Prison
Coimbatore.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying
for issuance of a Writ of Habeas Corpus setting aside the order dated

21.05.2018 passed in C.No.54/G/IS/2018, on the file of the 2nd respondent and direct the 2nd respondents herein to produce the body of detenu P.Sathishkumar, son of Pitchaikani, aged about 33 years, and residing at Rajamaniammal Street, Kumarapuram, Andipatti, Theni District, now detained under Central Prison, Coimbatore before this Honourable Court and set him at liberty.

For Petitioner : Ms.Elizabeth Ravi

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

ORDER

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

Petitioner is the wife of the detenu Sathishkumar S/o.Pitchaikani, who has been branded as a 'Drug Offender' under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in C.No.54/G/IS/2018 dated 21.05.2018.

2. The alleged ground case has been registered against the detenu in Crime No.275 of 2018 on the file of B-2 R.S.Puram Police Station for offences u/s.8(c) r/w 20(b)(ii)(C), 25, 27-A and 29 NDPS Act, 1985. 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 28.02.2018 and the order of detention came to be passed on 21.05.2018. A period of more than two and a half month 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 (Crl.) 752].

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

5. We took pains to place on record our displeasure. We 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.

6. In the decision relied upon by learned senior 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 second respondent, detaining the detenu Sathishkumar S/o.Pitchaikani in C.No.54/G/IS/2018 dated 21.05.2018 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.

[C.T.S., J] [M.N.K., J]
24.10.2018

Index: Yes/No
Internet: Yes
gm

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C.T.SELVAM, J
and
M.NIRMAL KUMAR, J

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To

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