

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

H.C.P.No.1831 of 2018

R.Noor

.. Petitioner

-vs-

1. The State represented by
The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

2. The Commissioner of Police,
Salem District,
Salem.

.. Respondents

PRAYER:

This Writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention dated 05.04.2018 passed by the 2nd respondent in C.M.P.No.16/Goonda/Salem City/2018 and quash the same and produce the detainee, John Basha S/o Rafeek aged about 26 years detained at Central Prison, Salem before this Court and set him at liberty.

For petitioner : Dr.S.Manoharan

For Respondents : Mrs.S.Thankira,
Government Advocate (Crl. Side)

O R D E R

(Order of the Court was delivered by N.KIRUBAKARAN, J.)

This writ petition has been filed challenging the detention order passed against the petitioner's son, John Basha under Tamil Nadu Act 14/1982. The petitioner's son was arrested on 23.01.2018 for the offence under Section 392 of IPC in Cr.No.16

of 2018. There are two other previous cases pending against the petitioner's son in Cr.No.189 of 2017 under Sections 341, 294 (b), 307 of IPC on the file of the Annadanapatty Police Station, Salem District. Similarly, another criminal case in Cr.No.750 of 2017 under Section 392 of IPC on the file of Annadanapatty Police Station was also registered. The ground case has been filed against the petitioner's son in Cr.No.53 of 2018 under Sections 341, 392 r/w 397, 502 (ii) of IPC. Challenging the said detention order passed against the petitioner's son, the petitioner is before this Court.

2.Heard Dr.S.Manoharan, learned Counsel for the petitioner and Mrs.S.Thankira, learned Government Advocate(Crl. Side) for the respondents.

3.Dr.S.Manoharan, learned Counsel for the petitioner would contend that there is a delay in passing the detention order as the petitioner's son was arrested on 23.01.2018 whereas, the detention order was passed on 05.04.2018, after passing of 72 days. He relied upon the Judgement of a Division bench of this Court in "Ramesh Vs.District Collector and District Magistrate, Tiruchirapalli District and another" reported in 2005 MLJ (Crl.) 821 and another unreported Judgement of this Court in "Raj @ Sekar @ Rajasekar Vs.State of Tamil Nadu and two others in H.C.P.(MD)No.1009 of 2018 dated 18.07.2018" to contend that similar detention orders have been quashed on the ground of delay in passing the detention order from the date of arrest.

4.However, Mrs.S.Thankira, learned Government Advocate (Crl. Side) would submit that there is no time limit fixed with regard to the passing of detention order. When there is no prohibition in passing the order with delay also, there cannot be any bar for the respondent to pass such a detention order.

5.Heard the parties and perused the records.

6.Though Dr.S.Manoharan, learned Counsel for the petitioner raised many grounds to attack the detention order that it is liable to be quashed fully on the ground of delay, the learned Government Advocate (Crl.Side) would submit that there is no prohibition in passing the detention order belatedly.

7.In this case, the petitioner's son was arrested on 23.01.2018 whereas, the detention order was passed on 05.04.2018, after 72 days. Taking into consideration, the settled position of law by this Court earlier in the Judgement reported in 2005 MLJ (Crl.) 821 and another unreported Judgement of this Court in "Raj @ Sekar @ Rajasekar Vs.State of Tamil Nadu and two others in H.C.P.(MD)No.1009 of 2018 dated 18.07.2018" and following the said judgments, the detention order is liable

to be set aside. Accordingly, it is set aside and the Habeas Corpus Petition is allowed. The detenu, viz., John Basha S/o.Rafeek who is now confined at Central Prison, Salem is directed to be set at liberty forthwith unless his presence is required in connected with any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State represented by its
The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Salem District,
Salem.
- 3.The Superintendent,
Central Prison,
Salem.
(in Duplicate for communication to detenu)
- 4.The Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai-9.
- 5.The Public Prosecutor,
High Court, Madras-104

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CS/25/03/2019