

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1900 of 2018

Eshaa

S/o.Umar Katha

... Petitioner

-vs-

1.State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai,
Chennai Police,
Vepery, Chennai - 600007.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for the entire records relating to petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order dated 04.08.2018 on the file of second respondent herein made in proceedings BCDGIISSV No.654/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's brother namely Mohamed Jakkiriya S/o.Umarkatha, aged 52 years, before this Court and set the petitioner's brother at liberty from detention, now petitioners brother detained at Central Prison, Puzhal, Chennai - 600066.

For Petitioner : Mr.C.C.Chellappan

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

O R D E R

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

Petitioner is the brother of the detenu Mohamed Jakkiriya S/o.Umarkatha, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of the second

respondent passed in BCDFGISSSV No.654/2018 dated 04.08.2018.

2. The alleged ground case has been registered against the detenu in Crime No.50 of 2018 on the file of S-1 St.Thomas Mount Police Station for offences under Sections 341, 419 and 392 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 15.06.2018 in respect of the ground case and the order of detention came to be passed on 04.08.2018. A period of more than one 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 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 Mohamed Jakkiriya S/o.Umarkatha in BCDFGISSSV No.654/2018 dated 04.08.2018 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless her custody is required in connection with any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gm

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.

2.The Commissioner of Police,
Greater Chennai,
Chennai Police,
Vepery, Chennai - 600007.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Joint Secretary to Government
Public Law and order
Fort St.George Chennai-9

5.The Public Prosecutor
High Court, Chennai.

H.C.P.No.1900 of 2018

gj(co)
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