

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2018

CORAM

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

H.C.P.No.1916 of 2018

S.Chandra

.. Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai.
Vepery, Chennai-600 024.
2. The Additional Chief Secretary to Government,
Home, Department of Prohibition and excise,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai-9.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records of the first respondent in BCDFGISSSV No.738/2018 dated 22.08.2018 and set aside the same and direct the first respondent to produce the detenu Hari @ Hariharan, Son of Sivaraman, aged 32 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set at liberty.

For Petitioner : Mr.C.D.Johnson

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.]

Challenge is made to the order of detention passed by the first respondent vide Proceedings in BCDFGISSSV No.738/2018 dated 22.08.2018, whereby the detenu, by name, Hari @ Hariharan, Son of Sivaraman, aged about 32 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

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

S.No	Police Station and Crime No.	Section of Law
1.	S-10 Pallikaranai Police Station Cr.No.1542/2017	341, 294(b), 323, 506 (ii) IPC R/W 24 of Arms Act, 1959
2.	R-1 Mambalam Police Station Cr.No.461/2018	341, 294(b), 384, 506 (ii) IPC r/w 120(B) IPC & 25(1)(a) Arms Act

The ground case has been registered against the detenu in Cr.No.437/2018 on the file of Inspector of Police, J-12 Kanathur Police Station for offences u/s 148, 353, 307, 506(ii) IPC & 25 (1-B) (a) r/w 3 of Indian Arms Act 1959. The detention order has been passed by first respondent in BCDFGISSSV No.738/2018.

3. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.437/2018 on 24.06.2018; whereas the detention order was passed on 22.08.2018, i.e. Nearly after a lapse of 59 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).

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. We have heard the learned counsel for both sides with regard to the facts.

7. 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.

8. 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 22.08.2018. Further, the detenu was arrested in the ground case as early as on 24.06.2018. This shows an inordinate delay of nearly 59 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.....”

9. 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.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner of Police,
Greater Chennai.
Vepery, Chennai-600 024.
2. The Additional Chief Secretary to Government,
Home, Department of Prohibition and excise,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai-9.
3. The Joint Secretary to Government
Public(Law and order)
Fort. St. George
Chennai 9.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Public Prosecutor
High Court, Madras.

+2 Ccs to Mr.C.D. Johnson, Advocate sr 66163.

H.C.P.No.1916 of 2018

SP(08/10/2018)