

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2018

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

H.C.P.No.708 of 2018

Subramani
S/o.Krishnappan

... Petitioner

-vs-

1.State of Tamil Nadu
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and
District Magistrate of Vellore District,
Vellore - 9.

... 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 son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 13.01.2018 on the file of second respondent herein made in proceedings C3.D.O.No.03/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely Narasimman, S/o.Subramani, aged 22 years, before this Court and set the petitioner's son at liberty from detention, now petitioner's son detained at Central Prison, Salem.

For Petitioner : Mr.C.C.Chellappan

For Respondents: Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

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

Petitioner is the father of the detenu Narasimman S/o.Subramani, 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 C3/D.O.No.03/2018 dated 13.01.2018.

2. The alleged ground case has been registered against the detenu on 13.11.2017, in Crime No.75 of 2017 on the file of Inspector of Police, Narcotic Substances Investigation Bureau, C.I.D., Vellore, Vellore District, for offences under Section 8 (c) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances 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 13.11.2017 in respect of the ground case and the order of detention came to be passed on 13.01.2018. A period of 2 months 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. 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 Narasimman S/o.Subramani in C3/D.O.No.03/2018 dated 13.01.2018 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.

s/d-

Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and
District Magistrate of Vellore District,
Vellore - 9.
- 3.The Superintendent of Police,
Central Prison, Salem.
4. The Joint Secretary to Government
Public (Law and order)
Fort. ST. George
Chennai 9.
- 5.The Public Prosecutor
High Court, Chennai.

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SV(CO)
SP(11/09/2018)