

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

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

H.C.P.No.749 of 2018

P.Geethanjali

.. Petitioner

Vs.

1.The State of Tamil nadu
rep. by its Secretary,
Home Department [Prohibition and Excise]
Fort.St. George, Chennai-9.

2.The Commissioner of Police,
Detaining Authority,
Coimbatore City.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention C.NO.34/G/IS/2018 dated, 19/03/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu B.Purusothaman, S/O.Balakrishnan, who is presently detained in the Central Prison, Coimbatore to be produced before this Hon`ble court and set at liberty.

For Petitioner : Mr.R.Veeramani

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 second respondent vide Proceedings in C.No.34/G/IS/2018 dated 19.03.2018, whereby the detenu, by name, B.Purusothaman, son of Balakrishnan, aged about 53 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	Cr.No. & Police Station	Offences
1.	Cr.No.30/2015 Coimbatore City Crime Branch Police Station	409, 420 IPC
2.	Cr.No.115/2018 Coimbatore City D-1 Ramanathapuram Police Station	120(B), 406, 420, 109 IPC

The ground case has been registered against the detenu in Cr.No.16 of 2018 on the file of Inspector of Police, D-3 Podanur Police Station for offences u/s 120(B), 406, 420, 494, 506(i) r/w 109 IPC. The detention order has been passed by second respondent in C.No.34/G/IS/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.16/2018 on 31.01.2018; whereas the detention order was passed on 19.03.2018, i.e. Nearly after a lapse of 47 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). Hence, on the above ground, the detention order is liable to be set aside.

5. Further, the Grounds of Detention would reveal that two adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.16/2018 for the offences u/s. 120(B), 406, 420, 494, 506(i) r/w 109 IPC. Admittedly, the bail application filed by the detenu in the adverse case before the learned Judicial Magistrate-VI, Coimbatore, in CrL.MP.2312/2018 was dismissed and he has moved bail application in the ground case and the same is pending in C.M.P.No.729/2018 before the District and Sessions Court, Coimbatore. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority

that the relatives of the detenu are taking steps to file bail applications in the ground case. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Hence, we are of the view that the detention order is liable to be set aside. It is to be noted that the detenu was arrested in the ground case in Cr.No.16/2018 on 31.01.2018, whereas the detention order was passed on 19.03.2018, i.e. after a lapse of 47 days. This inordinate delay in passing of detention order would vitiate the same. 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....."

6. 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.34/G/IS/2018 dated 19.03.2018, passed by the second respondent is set aside. The detenu, namely, B.Purusothaman, son of Balakrishnan, aged about 53 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kmi

To

- 1.The Secretary,
Home Department [Prohibition and Excise]
Fort.St. George, Chennai-9.
- 2.The Commissioner of Police,
Detaining Authority,
Coimbatore City.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Superintendent
Central Prison, Coimbatore.
- 5.The Joint Secretary to Government,
Public (L & O), Fort st.George,
Chennai-9.

+1cc to Mr.R.Veeramani, Advocate Sr.58199

H.C.P.No.749 of 2018

rsk[co]
srg 19/09/2018