

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

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

H.C.P.No.1993 of 2018

K.Kalyanasundaram
S/o.Kannabiran

... Petitioner

-vs-

1.The State of Tamil Nadu
represented by
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600009.

2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.

3.The Inspector of Police,
Somangalam Police Station,
Kancheepuram District.

... Respondents

Writ petition under Article 226 of the Constitution of India filed praying for issuance of a Writ of Habeas Corpus calling for records relating to the detention order passed by second respondent in BCDFGISSSV No.60/2018 dated 21.08.2018 and to quash the same and direct the respondents to produce the person or body of the detenu Gopi @ Gopinath S/o.Kalyanasundaram, aged about 29 years, before this Court and set him at liberty, now detained at Central Prison, Vellore.

For Petitioner : Mr.V.Logeswaren
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 father of detenu Gopi @ Gopinath S/o.Kalyanasundaram, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.60/2018 dated 21.08.2018.

2. The detenu came to adverse notice in the following cases:

Sl.No .	Police Station and Crime No.	Offences u/s.
1.	Somangalam Police Station, No.363/2017	448, 294(b), 506(ii) and 307 IPC
2.	Somangalam Police Station, No.373/2017	294(b), 323, 448, 506(ii) IPC and 3(i) Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992

The alleged ground case has been registered against the detenu in Crime No.135/2018 on the file of Somangalam Police Station for offences u/s.294(b), 323, 386, 506(ii), 307 IPC r/w 3(i) Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. 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 28.06.2018 in respect of the ground case and the order of detention came to be passed on 21.08.2018. A period of 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 (Cr1.) 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 second respondent, detaining the detenu Gopi @ Gopinath S/o.Kalyanasundaram in BCDFGISSSV No.60/2018 dated 21.08.2018 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.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

gm
To

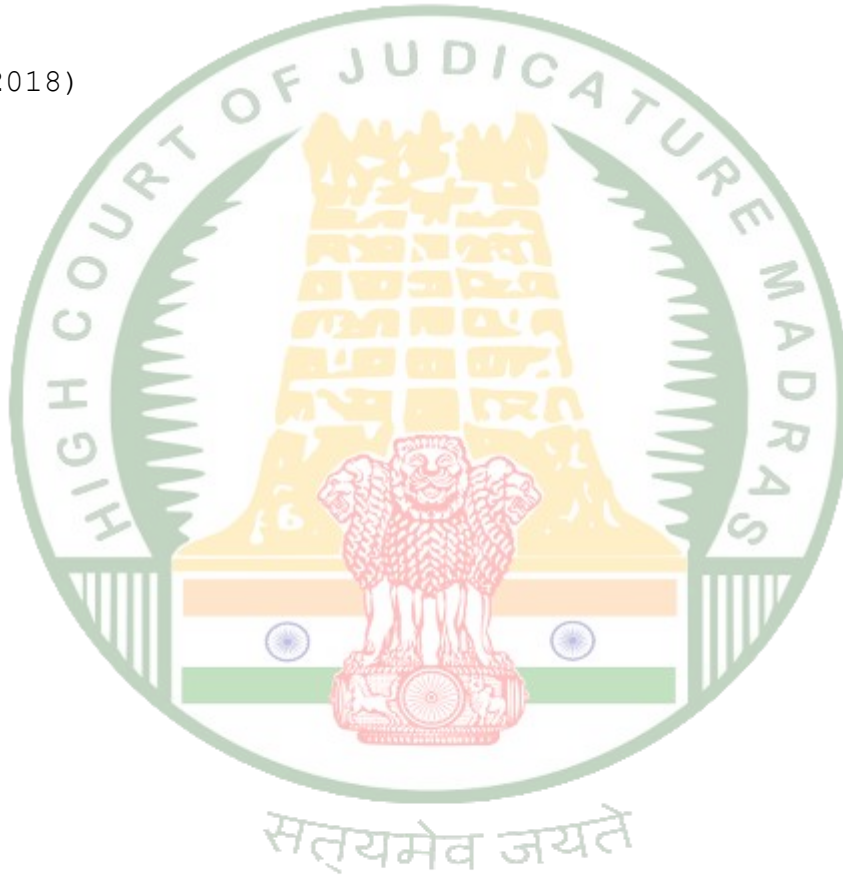
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- 4.The Public Prosecutor
High Court, Chennai.

5.The Superintendent,
Central Prison,
Vellore

6. The Joint Secretary to Government Public
(Law & Order) Fort St. George, Chennai-9.

H.C.P.No.1993 of 2018

(CS-DR)
EU(27/11/2018)



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