

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

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

H.C.P.No.777 of 2018

Soniya
W/o.Senthilkumar

... Petitioner

-vs-

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

2.Commissioner of Police,
Salem City.

... 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 in connection with the order of detention passed by the second respondent dated 12.03.2018 in C.M.P.No.13/Goonda/Salem City/2018 against the petitioner husband Senthilkumar, male aged 33 years, S/o.Duraisamy, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 wife of the detenu Senthilkumar S/o.Duraisamy, 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 C.M.P.No.13/Goonda/Salem City/2018 dated 12.03.2018.

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

Sl.No	Police Station and Crime No.	Sections of Law
1.	Karumalaikoodal Police Station, Crime No.170/2016	379 IPC
2.	Karumalaikoodal Police Station, Crime No.197/2017	392 r/w 397 IPC

The alleged ground case has been registered against the detenu in Crime No.765 of 2017 on the file of Sub-Inspector of Police, Annadanapatty Police Station, for offences under Section 364 (A), 395 and 397 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 31.12.2017 in respect of the ground case and the order of detention came to be passed on 12.03.2018. A period of more than 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 Senthilkumar S/o.Duraisamy in C.M.P.No.13/Goonda/Salem City/2018 dated 12.03.2018 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(CO)

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600009.
- 2.The Commissioner of Police,
Salem City.
- 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.

H.C.P.No.777 of 2018

SP(18/09/2018)