

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.2066 of 2018

Bavani ... Petitioner/Wife of the detenu

Vs

1.State of Tamil Nadu represented,
By Secretary to government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent pertaining to the order made in Memo No.436/BCDFGISSSV/2018 dated 25.06.2018 in detaining the detenu under Section 2(f) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu Kannan, Son of Mani aged about 36 years, who is detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmalkrishnan
For Respondents : Mr.R.Prathap Kumar
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 BCDFGISSSV No.436/2018

dated 25.06.2018, whereby the detenu, by name, Kannan, aged about 36 years, son of Mani, 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 & Crime No.	Section of Law
1.	S-1 St.Thomas Mount Police Station Cr.No.101/2018	379 IPC
2.	J-3 Guindy Police Station Cr.No.393/2018	379 IPC
3.	J-7 Velachery Police Station Cr.No.621/2018	379 IPC

The alleged ground case has been registered against the detenu in Crime No.394/2018 on the file of Inspector of Police, J-3, Guindy police station for offences u/s.341, 294(b), 427, 392, 397 and 506(ii) 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 12.05.2018 in respect of the ground case and the order of detention came to be passed on 25.06.2018 i.e. nearly after a lapse of 42 days 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. 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.

6. 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.....".'

7. 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 by name, Kannan, Son of Mani, in Memo No.436/BCDFGISSSV/2018 dated 25.06.2018, 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

//True Copy//

Sub Assistant Registrar

Jrl/jas

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Central Prison,
Puzhal, Chennai-66
- 4.The Joint Secretary to Government,
Public Lard & Order)
Fort St. Geroge, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2066 of 2018

(CO)
GSP(02/01/2019)

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