

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HON'BLE DR. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Habeas Corpus Petition No.842 of 2018

Kesavan

.. Petitioner

- Vs -

1. The Government of Tamil Nadu,
Represented by;
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
 2. The District Collector & District Magistrate,
Collectorate, Salem.
- .. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records connected with the order made in C.M.P.No.56/Goonda/C2/2017, dated 09.10.2017 by the District Magistrate, Salem (detaining Authority) and quash the said order and direct that the body of the detenu, Premkumar now confined in Central Prison, Salem to be produced before this Court.

For Petitioner : Mr. S.Ashok Kumar

For Respondents: Mr. R.Prathap Kumar, APP

O R D E R

(Order of the Court was made by S.Vimala, J.,)

The second respondent herein clamped an order of detention on 09.10.2017 as against Premkumar S/o.Kesavan aged 24 years, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under the provisions of the Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the father of the detenu has come forward with the present Habeas Corpus Petition.

3. Heard Mr. S.Ashok Kumar, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

4. It is contended that there is a delay of 43 days in considering the representation and this has rendered the detention illegal.

4.1. The learned Additional Public Prosecutor appearing for the respondents submitted that there is a delay of 43 days only, in considering the representation and it in no way vitiates the order of detention.

4.2. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the reasons for the delay.

5. In the case of Rashid Kapadia v. Medha Gadgil, (2012 (11) SCC 745), the Supreme Court had occasion to consider the effect of delay in considering the representation and in that context held as under :-

"13.It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the authority concerned as expeditiously as possible, is a constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of judgments where the principle is discussed in detail. They are: Mohinuddin v. District Magistrate, Beed [(1987) 4 SCC 58 : 1987 SCC (Cri) 674] and Harshala Santosh Patil v. State of Maharashtra [(2006) 12 SCC 211 : (2007) 1 SCC (Cri) 680]."

6. In view of the above proposition, the delay in considering the representation submitted by the petitioner, which has not been explained properly, has vitiated the order of detention. The delay is fatal to the order of detention and this has rendered the detention illegal.

7. On this short ground, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Premkumar S/o.Kesavan aged 24 years, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.S.Ashok Kumar, Advocate sr.no.44996

H.C.P.No.842 of 2018

kgk(co)
nr 03/08/2018

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