

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Habeas Corpus Petition No.931 of 2018
& Crl.M.P.No.8925 of 2018

Suriyam .. Petitioner
/ Sister of the detainee

- Vs -

1. The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009
2. The Commissioner of Police,
Greater Chennai, Vepery, Chennai 600 007
3. The Inspector of Police, Cyber Crime Cell,
Central Crime Branch, Vepery,
Chennai 600 007 .. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in No.264/BCDFGISSSV/2018, dated 26.04.2018 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body and person of the detainee, by name, Thiru.Piramanayagam, S/o.Chockalingam, aged about 45 years, who is now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. R.C.Paul Kanagaraj

For Respondents : Mr. R.Prathap Kumar, APP

O R D E R

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

Stating that the detainee / Thiru.Piramanayagam, S/o.Chockalingam has a special child, who is suffering from "generalized epileptiform abnormality" and due to which, the

child is facing sleeping disorder and also slow in responding, Criminal Miscellaneous Petition No.8925 of 2018 has been filed seeking to advance the hearing of the Habeas Corpus Petition.

2. According to the learned counsel appearing for the petitioner, the case of the co-accused has been favourably considered by this Court by the order, dated 21.06.2018 in HCP No.294 of 2018.

3. The second respondent, the Commissioner of Police, Greater Chennai, Vepery, Chennai, clamped an order of detention on 26.04.2018 as against the detenu, Piramanayagam, S/o.Chockalingam, aged about 45 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.

4. Challenging the order of detention, the sister of the detenu has come forward with the present habeas corpus petition.

5. It is contended by the learned counsel appearing for the petitioner that there is a delay of 13 days in considering the representation and this has rendered the detention illegal.

5.1. Per contra, the learned Additional Public Prosecutor appearing for the respondents submitted that there is only a delay of 13 days and it in no way vitiates the order of detention.

6. Though such a contention is advanced, however, no explanation has been adduced by the respondents explaining the delay for even 13 days.

7. 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]."

8. 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 also fatal to the order of detention and this has rendered the detention illegal.

9. Under the stated circumstances, the order of detention is quashed. The Habeas Corpus Petition is allowed. The detainee, Piramanayagam, S/o.Chockalingam, aged about 45 years, now confined in Central Prison, Puzhal, Chennai, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case. Consequently, the connected CrI.M.P is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government, Government of Tamil Nadu, Home, Prohibition and Excise Department, Secretariat, Chennai 600 009
2. The Commissioner of Police, Greater Chennai, Vepery, Chennai 600 007
3. The Inspector of Police, Cyber Crime Cell, Central Crime Branch, Vepery, Chennai 600 007
4. The Public Prosecutor, Madras High Court, Chennai - 104
5. The Superintendent of Prisons, Central Prison, Puzhal, Chennai.

+1cc to Mr.R.C.Paul Kanagaraj, Advocate SR.No.49445

H.C.P.No.931 of 2018

RSI (CO)
SMI/10.08.2018