

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2018

CORAM

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

H.C.P.No.2273 of 2018

Puzhiyendran
S/o.Rangasamy

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Prohibition and Excise Department, Home,
Fort St.George,
Chennai- 600 009.

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

... 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 relating to the Detention order passed by the second respondent in BCDFGISSSV No.739 of 2018 dated 22.08.2018 and set aside the same and consequently direct the respondents to produce the detenu Bharathi, son of Puzhiyendran, now confined at Central prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.Y.Deva Arul Prakash
For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER
(Order of the Court was made by C.T.SELVAM, J)

Petitioner, who is the father of the detenu viz., Bharathi, S/o.Puzhiyendran, has been branded as a "Goonda" under Section 2 (f) of the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BCDFGISSSV No.739/2018 dated 22.08.2018.

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

Sl.No.	Details of the Criminal Cases	Offences
1.	J-6 Thiruvannamipur Police Station	341 and 307 IPC

The alleged ground case has been registered against the detenu in Crime No.882 of 2018 on the file of second respondent for offences u/s.341, 294(b), 323, 427, 397 and 506(ii) IPC. Aggrieved by the detention order of the second respondent, the present writ petition has been filed.

3. Learned counsel for petitioner submits that the detenu was arrested on 12.07.2018 in respect of the present case and the order of detention came to be passed on 22.08.2018. A period of more than 1½ months had lapsed between the date of arrest of the detenu and date of the detention order. 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.....".'

The Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent, detaining the detenu viz., Bharathi, S/o.Puzhiyendran, in Order BCDFGISSSV No.739/2018 dated 22.08.2018, 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

//True Copy//

Sub Assistant Registrar

gm/rst

To

- 1.The Secretary,
The State of Tamil Nadu,
Prohibition and Excise Department, Home,
Fort St.George,
Chennai- 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Chennai.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor
High Court, Chennai.

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GSP (24/01/2019)