



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P. (MD) No.239 of 2018

G.Antony Premkumar ... Petitioner
Vs.

1.The State rep. by
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Trichirapalli City,
Trichirapalli.

3.The Superintendent,
Central Prison, Trichy.

4.The Inspector of Police,
Palakkarai Police Station,
Trichirapalli.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the Respondents herein to produce the detenu Guna @ Gunasekaran son of Arumaidoss, who has been termed as "Drug-Offender" who is now confined in Central Prison, Trichy and call for records in C.No.09/Detention/C.P.O/T.C/2018 dated 07.02.2018 passed by the 2nd Respondent herein before this Hon'ble Court and set aside the same and set the detenu at liberty.

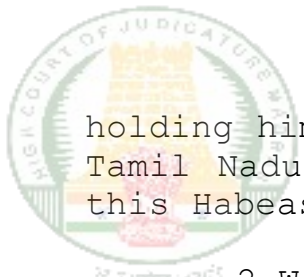
For Petitioner : Mr.T.Senthil Kumar

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor.

ORDER

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

The petitioner is the son of the detenu viz., Guna alias Gunasekaran, aged about 49 years. The detenu has been detained by order in C.No.09/Detention/C.P.O./T.C/2018, dated 07.02.2018,



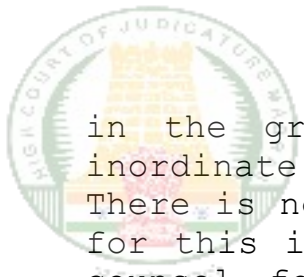
holding him to be a "Drug Offender", as contemplated under 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention. Further, the detenu was arrested in the ground case on 04.01.2018; whereas the Detention order was passed on 07.02.2018, i.e., after a lapse of 34 days. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for petitioner placed reliance on the judgment of a Division Bench of this Court reported in **2005 MLJ (Crl.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another)**. Hence, on the above grounds, the detention order is liable to be set aside.

4. A perusal of the Grounds of Detention would reveal that the ground case came to be registered against the detenu in Cr.No.8 of 2018 for the offence u/s. 8(c) r/w 20(b)(ii)(B) NDPS Act, 1985. Though the bail application moved on behalf of the detenu in the ground case was dismissed on 29.01.2018, another bail application has been moved on behalf of the detenu and the same is pending in Cr.M.P.No.266 of 2018 before learned Additional District Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act cases, Pudukkottai. Though the detaining authority has made reliance on similar case in which an accused was granted bail, the facts involved in that case are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits; but passed, based on mere *ipse dixit*. Hence, on the above ground, the detention order is liable to be set aside.

5. Further, a perusal of the grounds of detention as well as the detention order passed by the detaining authority would show that the Detention Order was passed on 07.02.2018; but from the grounds of detention, it is seen that the detenu was arrested



in the ground case as early as on 04.01.2018. This shows an inordinate delay of nearly 34 days in passing the detention order. There is no explanation forthcoming on the side of the respondents for this inordinate delay in passing the detention order. Learned counsel for the petitioner has rightly placed reliance on the decision in **Ramesh's case** (cited supra) wherein 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....."

6. In view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

7. In the result, the Detention Order, passed by the second respondent, in his proceedings in C.No.09/Detention/C.P.O/T.C/2018, dated 07.02.2018, is quashed. The detenu, namely, Guna alias Gunasekaran, son of Arumaidoss, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.



8. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar (CS-III)

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/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
2. The Commissioner of Police,
Trichirapalli City,
Trichirapalli.
3. The Superintendent,
Central Prison, Trichy.
4. The Inspector of Police,
Palakkarai Police Station,
Trichirapalli.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort. St. George, Chennai-9
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SJ

VB/SV/SAR1/14.06.2018/4P/7C

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