



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.315 of 2018

Malarkodi

... Petitioner

Vs.

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

2.The Commissioner of Police,  
Office of the Commissioner of Police,  
Madurai City,  
Madurai District.

3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.

... Respondents

**PRAYER:** The petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the Respondent No.2 in No.16/BCDFGISSSV/2018 dated 28.02.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Soundar @ Soundarapandian, son of Ramaiah Thevar, aged about 40 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

**ORDER**

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

The petitioner is the mother-in-law of the detenu viz., Soundar @ Soundarapandian S/o. Ramaiah Thevar, aged about 40 years. The detenu has been detained by order in No.16/BCDFGISSSV/2018, dated 28.02.2018, holding him to be a "Drug Offender", as contemplated under Section 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 31.01.2018; whereas the Detention order was passed on 28.02.2018, i.e., after a lapse of 28 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 (Cr1.) 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.59 of 2018 for the offences u/s. 8(c) r/w 20(b)(ii)(B), 25 & 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985. Despite the dismissal of bail application moved on behalf of the detenu in the ground case, a bail application has been moved on his behalf in the ground case and the same is pending in Cr.M.P.No.790 of 2018 and the same is pending before the Special Court (for Narcotic Drugs and Psychotropic Substances Act Cases), Madurai. 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 28.02.2018; but from the grounds of detention, it is seen that the detenu was arrested in the ground case as early as on 31.01.2018. This shows an inordinate delay of nearly 28 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 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 No.16/BCDFGISSSV/2018, dated 28.02.2018, is quashed. The detenu, namely, Soundar @ Soundarapandian, son of Ramaiah Thevar, 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(P&A)

/True Copy/



To

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

2.The Commissioner of Police,  
Office of the Commissioner of Police,  
Madurai City,  
Madurai District.

3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.

4.The joint Secretary to Government,  
Public (Law & order),  
Fort St.George, Chennai-9.

5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+ 1 cc TO Mr.R.Alagumani , Advocate in SR No. 63748

sj

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

**H.C.P. (MD) No.315 of 2018**  
**25.04.2018**