



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

and

THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.339 of 2018

Muthuselvam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli 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 records relating to the impugned Order of Detention made in H.S. (M) Confdl. No.03/18 dated 22.02.2018 on the file of the District Collector and District Magistrate, Thoothukudi District, Thoothukudi, the 2nd Respondent herein, branding the detenu by name Muthuselvam S/o. Palanisamy, aged about 30 years, as 'GOONDA' who is now confined in Central Prison, Palayamkottai, Tirunelveli District and quash the Impugned Order of Detention and set him at liberty by producing him before this Hon'ble Court.

For Petitioner

: Mr.A.Thiruvadi 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 detenu viz., Muthuselvam, Son of Palanisamy, aged about 30 years. The detenu has been detained by order in H.S. (M) Confdl. No.03/18, dated 22.02.2018, holding him



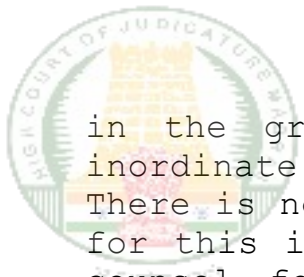
to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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 24.11.2017; whereas the Detention order was passed on 22.02.2018, i.e., after a lapse of 90 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.185 of 2017 for the offences u/s. 341, 147, 148, 324, 307 and 302 I.P.C. altered into Sections 120(b), 341, 147, 148, 324, 307 and 302 I.P.C. r/w 34 I.P.C. Though the bail application moved on behalf of the detenu has been dismissed by the Sessions Court, another bail application has been moved on behalf of the detenu in the ground case in Cr.M.P.No.619 of 2018 on the file of Principal Sessions Court, Thoothukudi and the same is pending. 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 22.02.2018; but from the grounds of detention, it is seen that the detenu was arrested



in the ground case as early as on 24.11.2017. This shows an inordinate delay of nearly 90 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 H.S. (M) Confdl. No.03/18, dated 22.02.2018, is quashed. The detenu, namely, Muthuselvam, son of Palanisamy, 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(T&P)

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/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli 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.

+1cc to Mr.A.Thiruvadi Kumar, Advocate SR.No.63767

SJ

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

H.C.P. (MD) No.339 of 2018
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