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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2018

CORAM:

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

H.C.P.(MD)No.661 of 2018

Sekar alias Gnanasekar ... Petitioner

Vs.

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

2. The Deputy Inspector General of Police,
   Tirunelveli Range and the Commissioner of Police,
   Tirunelveli City (Full Additional Charge),
   Tirunelveli.

3. The Superintendent of Prison,
   Central Prison, Palayamkottai,
   Tirunelveli. ... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in No.28/BCDFGISSSV/2018 dated 27.04.2018 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Sekar alias Gnanasekar, aged about 26 years, S/o.Kanthasamy, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.V.Neelakandan, APP

ORDER

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

Petitioner is the detenu - Sekar alias Gnanasekar, son of Kanthasamy. Detenu has been detained by second respondent by impugned Detention Order in No.28/BCDFGISSSV/2018 dated 27.04.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

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2.We have heard learned counsel for petitioner and learned Additional Public Prosecutor 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, the learned counsel for petitioner would mainly focus on the ground that the detenu, in this case, was arrested on 24.01.2018, whereas the detention order was passed on 27.04.2018, i.e., with an inordinate delay, which, according to the learned counsel, vitiates the order of detention. 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.We have also heard the submissions made by the learned Additional Public Prosecutor on the above said contentions raised on behalf of the petitioner.

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 27.04.2018; but from the grounds of detention, it is seen that the detenu was arrested in the ground case as early as on 24.01.2018. This shows an inordinate delay in passing the detention order. Thus, on this sole ground alone, the impugned order of detention is liable to be set aside. 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.*

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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 live link between arrest and need for passing the order of detention has snapped and the detention order is liable to be set aside.

7.In the result, the Detention Order, passed by the second respondent, in his proceedings in No.28/BCDFGISSSV/2018 dated 27.04.2018, is quashed. The detenu, namely, Sekar alias Gnanasekar, son of Kanthasamy, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case. Accordingly, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
   Home, Prohibition and Excise Department,
   Fort, St.George, Chennai 600 009.

2. The Deputy Inspector General of Police,
   Tirunelveli Range and the Commissioner of Police,
   Tirunelveli City (Full Additional Charge),
   Tirunelveli.

3. The Superintendent of Prison,
   Central Prison, Palayamkottai,
   Tirunelveli.

4. The Joint Secretary to Government,
   Public (Law and Order),
   Fort.St.George,
   Chennai - 9.

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

NBJ

VB/SKN/SAR4/23.07.2018/4P/6C

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