



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2018

CORAM:

WEB COPY

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

H.C.P.(MD)No.818 of 2018

M.Mottaiyan alias Mottaiyasamy

... Petitioner

Vs.

1. State Represented by
The Deputy General of Police,
Tirunelveli Range and,
Commissioner of Police,
Tirunelveli City,
Tirunelveli.

2. The Principle Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

3. The Superintendent,
Central Prison,
Palayamkottai.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records from the first respondent in No.37/BCDFGISSSV/2018, dated 21.05.2018 by setting the detenu (M.Mottaiyan alias Mottaiyasamy, aged 25, S/o.Madasamy), at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner
For Respondents

: Mr.K.Prabhu
: Mr.V.Neelakandan, APP

ORDER

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

Petitioner is the detenu - M.Mottaiyan alias Mottaiyasamy, aged about 25 years, S/o.Madasamy. Detenu has been detained by first respondent by his order in No.37/BCDFGISSSV/2018, dated 21.05.2018, holding him to be a "Goonda", as contemplated under Section 2(1) of the 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 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 for petitioner would mainly focus on the ground that detenu, in this case, was arrested on 03.03.2018, whereas detention order was passed on 21.05.2018, i.e., with an inordinate delay, which, according to 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.) 818 (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 learned Additional Public Prosecutor on the above said contentions raised on behalf of petitioner.

5. Further, a perusal of the grounds of detention as well as the detention order passed by the detaining authority would show that Detention Order was passed on 21.05.2018; but from the grounds of detention, it is seen that detenu was arrested in ground case as early as on 03.03.2018. 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 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 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 first respondent, in his proceedings in No.37/BCDFGISSSV/2018, dated 21.05.2018 is quashed. Detenu, namely, M.Mottaiyan alias Mottaiyasamy, aged about 25 years, S/o.Madasamy, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

8. Accordingly, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Deputy General of Police,
Tirunelveli Range and,
Commissioner of Police,
Tirunelveli City,
Tirunelveli.
2. The Principle Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
3. The Superintendent,
Security Services,
Palayamkottai.



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

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

+ 1 CC TO Mr.K.PRABHU, ADVOCATE IN SR No. 73387

NBJ

TE/RP/SAR-1 : 06/08/2018 : 4P/7C

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