



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.1191 of 2018

Balan @ Balakrishnan

... 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 District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.

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

... Respondents

PRAYER: Habeas Corpus 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 of the Respondent No.2 in Detention Order No.68/2018 dated 07.08.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Balan @ Balakrishnan, Son of Sethupathi, aged about 29 years, now detained at Madurai Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner challenges the impugned order of detention, dated 07.08.2018 in Detention Order No.68 of 2018, detaining him as "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.



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 on the ground of delay in passing the order of detention. According to him, the detenu was arrested in the ground case on 08.06.2018; whereas the Detention order was passed on 07.08.2018, i.e., after a lapse of 59 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 ground, the detention order is liable to be set aside.

4. 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 07.08.2018; but from the grounds of detention, it is seen that the detenu was arrested in the ground case as early as on 08.06.2018. This shows an inordinate delay of nearly 59 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 cases, 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....."

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5. 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.

6. In the result, the Detention Order, passed by the second respondent, in his proceedings in Detention Order No.68/2018 dated 07.08.2018, is quashed. The detenu, namely, Balan @ Balakrishnan, son of Sethupathi is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

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

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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- 2.The District Magistrate and District Collector,
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Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St. George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SJ

TE/RP/SAR-4 : 08/11/2018 : 3P/6C

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