



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P[MD]No.1327 of 2018

WEB COPY

Sunder @ Sunderraj

: Petitioner

Vs.

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

2. The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.

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

: Respondents

PRAYER: 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 passed in P.D.No.46 of 2018 dated 31.08.2018 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 Sunder @ Sunderraj, aged about 29 years, S/o. Selvaraj, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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 is the detenu. The detenu has been detained by the second respondent by his order in P.D.No.46 of 2018 dated 31.08.2018, holding him to be a "Bootlegger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the 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 his argument on the ground that the detenu, in this case, was arrested on 30.07.2018, whereas the detention order was passed on 31.08.2018, 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. 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 31.08.2018; but from the grounds of detention, it is seen that the detenu was arrested in the ground case as early as on 30.07.2018. 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.



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 P.D.No.46 of 2018 dated 31.08.2018, is quashed. The detenu, namely, Sunder @ Sunderraj, S/o. Selvaraj, aged about 29 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

8. The Habeas Corpus Petition shall stand allowed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Principal Secretary to the Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
3. The Superintendent of Prison,
Palayamkottai,
Tirunelveli.



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

Mr
MK/ES/RSK/SAR 2/27.12.2018/4P/5C

ORDER MADE IN
H.C.P[MD] No.1327 of 2018
31.10.2018