

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

H.C.P. No. 2005 of 2018

A. Velusamy

..Petitioner

Vs.

1. The State rep. by its
Secretary to Government,
Home, Prohibition &
Excise Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India for issue of a Writ of Habeas Corpus to call for the records leading to the detention of the petitioner's son namely, V. Prabhu, son of A. Velusamy, aged 28 years under Act 14/1982 vide detention order dated 11.08.2018 on the file of the 2nd respondent made in proceedings in C.No. 88/G/IS/2018, quash the same and consequently direct the respondents herein to produce the body and person of V. Prabhu, S/o.A. Velusamy, aged 28 years, who is lodged at Central Prison, Coimbatore before this Honourable Court and set him at liberty.

For Petitioner :: Ms.R.Subadradevi

For Respondents:: Mr.R. Prathap Kumar,
Addl. Public Prosecutor

O R D E R

N. KIRUBAKARAN, J.

The father of the detenu is before this Court challenging the detention order passed by the 2nd respondent dated 11.08.2018 in C.No. 88/G/IS/2018 by which the detenu, namely, V. Prabhu, aged about 28 years, has been branded as a 'Goonda' and

detained under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) read with the order issued by the Government of Tamil Nadu in G.O.(D) No. 154, Home, Prohibition and Excise (XVI) Department dated 18.07.2018.

2. The ground case against the petitioner's son/detenu was registered in Crime No. 825 of 2018 under Sections 364(A), 395 r/w 397 IPC on the file of B-2, R.S. Puram Police Station, Coimbatore City. The detenu was arrested on 06.07.2018 and later on, produced before learned Judicial Magistrate No.I, Coimbatore and remanded to judicial custody till 20.07.2018. Further, his remand period was periodically extended upto 16.08.2018.

3. The Detaining Authority, on being satisfied, based on the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, passed the order of detention.

4. Learned counsel for the petitioner would submit that the ground case is the only case pending against the detenu. He would attack the order of detention on the following grounds:

(i) The detenu was arrested on 06.07.2018 whereas the order of detention was passed on 11.08.2018. Hence, the order of detention is liable to be set aside on the ground of delay. In support of this, reliance was placed on the judgment dated 14.11.2018 of a Division Bench of this Court in H.C.P. No. 1758 of 2018 and the judgment rendered in Ramesh V. District Collector and District Magistrate, Trichy District and another reported in 2005 MLJ CrI. 752.

(ii) The imminent possibility of detenu coming out on bail is ruled out as the bail petition filed by the detenu, in respect of the ground case, before the Principal District and Sessions Judge Coimbatore, in C.M.P. No. 2085 of 2018 was dismissed on 20.07.2018.

(iii) There is total non-application of mind on the part of the Detaining Authority, in passing the order of detention inasmuch as, except stating in the Grounds of Detention that since in similar cases, Courts have granted bail, there is possibility of the detenu coming out on bail by filing another application, no details regarding similar cases have been mentioned therein.

5. However, learned Additional Public Prosecutor would defend the detention order stating that not only the ground case, but there are six previous cases against the detenu and he is an accused in Crime Nos. 961/2011, 314/2013 and 12/2014, S.C. No. 29/2015.

6. Heard Mr.C.D. Sugumar, learned counsel for the petitioner and Mr.R. Prathap Kumar, learned Additional Public Prosecutor for respondents.

7. A close scrutiny of the records would reveal that petitioner's son/detenu was arrested on 06.07.2018. The detention order was passed on 11.08.2018 with a delay of 37 days. The two judgments relied on by the learned counsel for the petitioner, especially, the judgment reported in 2005 MLJ (Crl.) 752, a Division Bench of this Court held that delay in passing the detention order is fatal. The relevant portion at paragraph Nos. 3 & 4 are extracted hereunder:

'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 concluded thus:

Such delays tend to have an effect of snapping the link between prejudicial activity and passing of preventive orders'

In view of the aforesaid decision rendered by the Division Bench of this Court, detention order is not sustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

8. That apart, it is admitted in the Grounds of Detention that the bail petition filed by the detenu was dismissed on 20.07.2018 and that being so, there is no imminent possibility of the detenu coming out on bail. Further, the Detaining Authority has stated that in similar cases, bail has been granted and therefore, there is possibility of detenu filing another bail application. However, the details of similar cases have not been stated in the detention order, which shows that there is total non-application of mind on the part of the Detaining Authority in passing the order of detention.

9. For all the above reasons, the impugned detention order dated 11.08.2018 passed by the 2nd respondent in C.No. 88/G/IS/2018 is liable to be set aside and accordingly, it is set aside. The Habeas Corpus Petition is allowed. The detenu namely V. Prabhu, S/o. A. Velusamy, aged about 28 years, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other proceedings/case.

Sd/-

Assistant Registrar(CS-Insp.Cell)

//True copy//

Sub Assistant Registrar

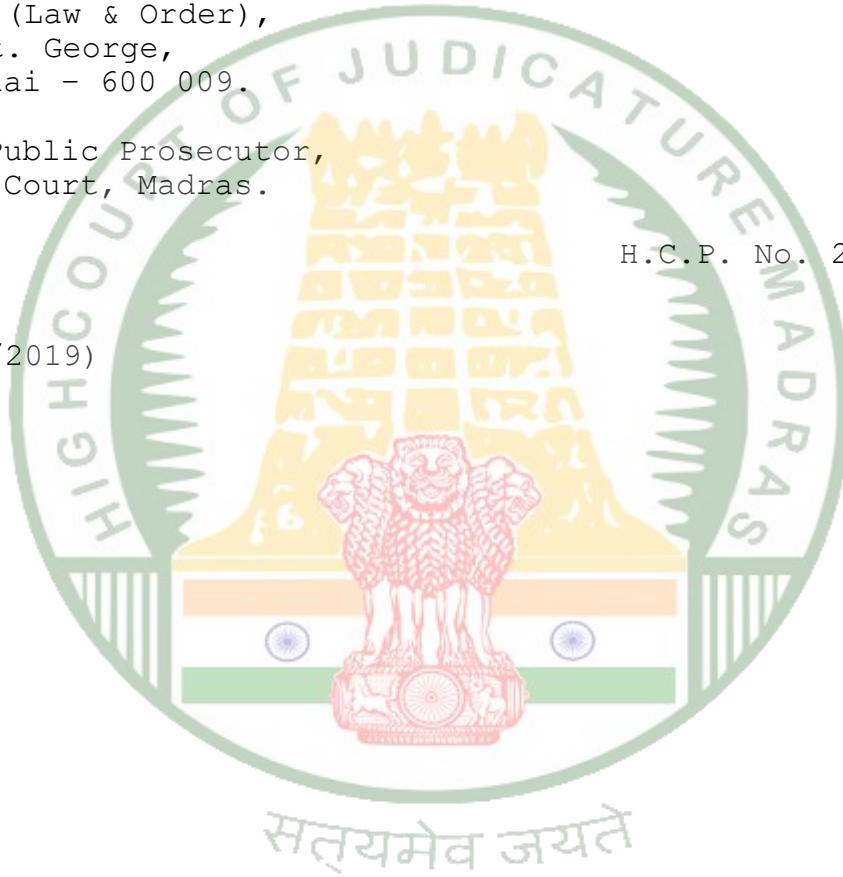
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1. The Secretary to Government,
Home, Prohibition &
Excise Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore District.
3. The Superintendent,
Central Prison,
Coimbatore
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 2005 of 2018

SV(CO)
GMY(25/04/2019)



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