

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P.No.2177 of 2018

A.Kalpana

.. 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 Commissioner of Police,

Greater Chennai,
O/o the Commissioner of Police, (Goondas Section)
Vepery, Chennai-600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 2nd respondent in No.811/BCDFGISSSV/2018 dated, 05/09/2018 against the petitioner's brother A.Umapathy, M/A 42 years, S/O.Adhimoolam, who is confined at Central Prison-II, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Hon'ble court and set him at liberty.

For Petitioner : Mr.V.Parthiban
for Mr.R.Selvakumar

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

Challenge is made to the order of detention passed by second respondent vide Proceedings in No.811/BCDFGISSSV/2018

dated 05.09.2018, whereby the detenu, by name, A.Umapathy, son of Adhimoolam, aged about 42 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "SEXUAL OFFENDER".

2. The ground case has been registered against the detenu in Cr.No.06/2018 on the file of Inspector of Police, W-6 All Women Police Station, Ayanavaram for offences u/s 307, 506(ii) IPC & Section 6, 10, 12 Protection of Child from Sexual Offences Act, 2012 @ 341, 342, 328, 376(AB), 376(DB), 307, 506(ii) IPC & Sec. 6, 10, 12 Protection of Child from Sexual Offences Act, 2012. The detention order has been passed by second respondent in No.811/BCDFGISSSV/2018.

3. Learned counsel for petitioner submits that there was a delay in passing the detention order. Learned counsel submitted that the detenu was arrested in the ground case in Cr.No.06/2018 on 16.07.2018; whereas the detention order was passed on 05.09.2018, i.e. Nearly after a lapse of 51 days. Therefore, the live link between the offence for which the detenu was arrested and the need for passing the order of detention towards avoiding further indulging in such wrongful activities is snapped. This inordinate delay in passing of detention order would vitiate the same. In support of his contention, learned counsel for the 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). Learned counsel also submitted that towards justifying the order of detention, the detaining authority has not informed the Crime Number, which is similar in nature to that of the detenu in the booklet and what has been provided is not the order of grant of bail but that of relaxation of condition of bail. Therefore, there is a denial of opportunity to the detenu to make an effective representation.

5. We have heard learned counsel for both sides with regard to the facts as also perused the counter affidavit filed by second respondent.

6. Learned Additional Public Prosecutor submits that owing to collection of voluminous papers, the order of detention could not promptly be passed.

7. We would allow the present petition not only on the ground of delay in passing the order of detention but also for the reason that by not furnishing the detenu with the copy of

the order of bail in the case stated as similar, the opportunity to make an effective representation has been denied. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind. 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....."

8. 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.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in No.811/BCDFGISSSV/2018 dated 05.09.2018 passed by the second respondent is set aside. The detenu viz., A.Umapathy, son of Adhimoolam, aged about 42 years, is directed to be released forthwith unless his presence is required in connection with any other case.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai,
O/o the Commissioner of Police, (Goondas Section)
Vepery, Chennai-600 007.
3. The Superintendent of Prison,
Central Prison II, Puzhal,
Chennai-600 066.
4. The Joint Secretary,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2177 of 2018

GN(14/02/2019)