

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

H.C.P.No.2530 of 2018

K.Selvam,
aged about 60 years,
S/o.Kannappan,
21, Madukkarai Main Road,
Karikalampakam,
Puducherry - 605 007.

... Petitioner/Father of the Detenu

Vs.

1.The Union of India,
represented by its
Secretary to Government,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 100 001.

2.The Union Territory of Puducherry,
represented by its
Secretary to Government,
Home Department,
Secretariat,
Puducherry.

3.The District Magistrate cum Authorized Officer,
1st Floor, New Revenue Complex,
Vazhudavoor Road,
Pettaiyanchathiram,
Puducherry - 605 009.

4.The Director General of Police,
Government of Puducherry,
Puducherry.

... Respondents

[The fourth respondent is impleaded as per the
order of this Court dated 02.11.2018 passed in
H.C.P.No.2530 of 2018]

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the proceedings of the detention order dated 28.08.2018 passed by the third respondent in No.08/DM/RO/D2/PPASAA/2018, under Section 3 of the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010) and to set aside the same and consequently, direct the respondents to produce the body of the petitioner's son, Iyyanar @ Rajadurai, the detenu herein, who is confined at Central Prison, Kalapet, Puducherry before this Court and set him at liberty forthwith.

For petitioner : Mr.V.Selvarajan

For Respondents: Mr.G.Karthikeyan,
Assistant Solicitor General of India
for R.1

Mr.Balamurugane
Additional Public Prosecutor (Puducherry)
for R.2 to R.4

O R D E R

(Order of the Court was made by N.KIRUBAKARAN, J.)

The petitioner is the father of the detenu challenging the detention order passed against his son by the third respondent in No.08/DM/RO/D2/PPASAA/2018, under Section 3 of the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010), dated 28.08.2018, detaining him as "Dangerous Person" as contemplated under sub-section (1) of Section (3) of the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010).

2. The following criminal cases were registered against the detenu:

Sl.No	Crime Nos.
1.	Cr.No.116/2012 u/s.435, 506(ii) IPC, r/w 34 IPC on the file of Mangalam PS. dated 03.09.2012.
2.	Cr.No.90/2013, u/s.324, 506(ii) IPC r/w 34 IPC of Mangalam PS. dated 25.10.2013.
3.	Cr.No.31/2014 u/s.294(b), 427, 506(ii) IPC & 3 of POPDP Act, 1984 r/w 34 IPC @ 147, 294(b), 427, 506(ii) IPC & 3 of POPDP Act, 1984, r/w 149 IPC of Mangalam PS. dated 03.04.2014.

4.	Cr.No.37/2016, u/s 294(b), 324, 506(ii) IPC r/w 34 IPC of Mangalam PS. dated 27.04.2016.
5.	Cr.No.57/2016, u/s.294(b), 427, 506(ii) IPC of Mangalam PS. dated 09.07.2016.
6.	Cr.No.100/2016 u/s.294(b), 323, 506(ii) IPC r/w 34 IPC of Mangalam PS, dated 04.11.2016.
7.	Cr.No.10/2017 u/s.147, 148, 341, 302 IPC @ 120(b), 147, 148, 341, 302 IPC r/w 149 IPC of Vikravandi PS, Tamil Nadu, dated 05.01.2017.
8.	Cr.No.82/2018, u/s.294(b), 324, 323, 506(ii) IPC r/w 149 IPC of Villianur PS, dated 26.03.2018.
9.	Cr.No.35/2018, u/s. 341, 302 IPC r/w 34 IPC of Mangalam PS, dated 21.04.2018.
10.	Cr.No.203/2018 u/s 25(1)(B)(b) of Arms Act, 1959 & 506 (ii) IPC of Villianur PS, dated 30.07.2018.

Since he is considered to be a Dangerous Person, he was detained under the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act 10 of 2010), vide order dated 28.08.2018 passed by the third respondent. The said order of detention is challenged before this Court.

3. Heard Mr.P.V.Selvarajan, learned counsel for the petitioner, Mr.G.Karthikeyan, learned Assistant Solicitor General of India appearing for the first respondent, Mr.Balamurugane, learned Additional Public Prosecutor (Puducherry) appearing for the respondents 2 to 4 and also perused the materials available on record.

4. The learned Counsel for the petitioner would submit that the detenu was arrested on 30.07.2018 and the detention order was passed on 28.08.2018 and therefore, there is a delay of 28 days in passing the detention order. Further, he would submit that though the bail application in the ground case is pending, there is no possibility of the detenu coming out on bail and in this regard, he relied upon the judgment of the Division Bench of this Court in Chandra v. State of Tamil Nadu rep. By the Secretary, Home, Prohibition and Excise Department, Secretariat, Fort St. George, Chennai - 600 009 and another [H.C.P.No.1427 of 2018, decided on 31.10.2018.].

5. The learned Counsel for the petitioner would submit that merely in similar case, bail has been granted, it will not enable the detenu to get bail and everything depends upon the facts of the case and therefore, there is non-application of mind on the part of the detaining authority and hence, he seeks

for quashing of the detention order passed by the third respondent.

6. However, the learned Additional Public Prosecutor (Puducherry) would oppose this petition contending that the detenu was detained as there is a possibility of coming out on bail as the bail application filed by him was pending and also in similar case, bail was granted.

7. A perusal of the records would reveal that the ground case registered against the detenu is in Cr.No.203/2018 under Section 25(1)(B)(b) of Arms Act, 1959 and Section 506 (ii) IPC of Villianur Police Station, dated 30.07.2018. Admittedly, the detenu has moved the third bail application in the ground case and the same is pending before the Court. Therefore, the probability of release of the detenu imminently does not arise. Therefore, there is no material to substantiate that there is real possibility of the detenu coming out on bail and hence, the detention order suffers for non-application of mind on the part of the detaining authority.

8. It is event from the records that the detenu was arrested on 30.07.2018 and the detention order was passed on 28.08.2018 and there is a delay of 28 days. When there is unexplained and inordinate delay in passing the detention order, the same is vitiated as per the decision of the Division Bench of this Court in Ramesh v. District Collector and District Magistrate, Tiruchirappalli District and another reported in 2005 MLJ (CrL.) 752. Paragraphs 3 and 4 of the said decision are usefully extracted hereinbelow:

"...

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....."

9. In view of the above decision rendered by the Division Bench of this Court, the detention order passed by the third respondent dated 28.08.2018 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.

10. In the result, this Habeas Corpus Petition is allowed and the detention order passed by the third respondent in No.08/DM/RO/D2/PPASAA/2018, dated 28.08.2018, is hereby set aside. The detenu, viz., IYYANAR @ RAJADURAI, Son of K.Selvam, aged about 26 years, who is now confined at Central Prison, Kalapet, Puducherry, is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rsb
To

1. The Secretary to Government,
Union of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 100 001.

2. The Secretary to Government,
Union Territory of Puducherry,
Home Department,
Secretariat,
Puducherry.

3.The District Magistrate cum Authorized Officer,
1st Floor, New Revenue Complex,
Vazhudavoor Road,
Pettaiyanchathiram,
Puducherry - 605 009.

4.The Director General of Police,
Government of Puducherry,
Puducherry.

5.The Additional Public Prosecutor (Puducherry),
High Court,
Madras.

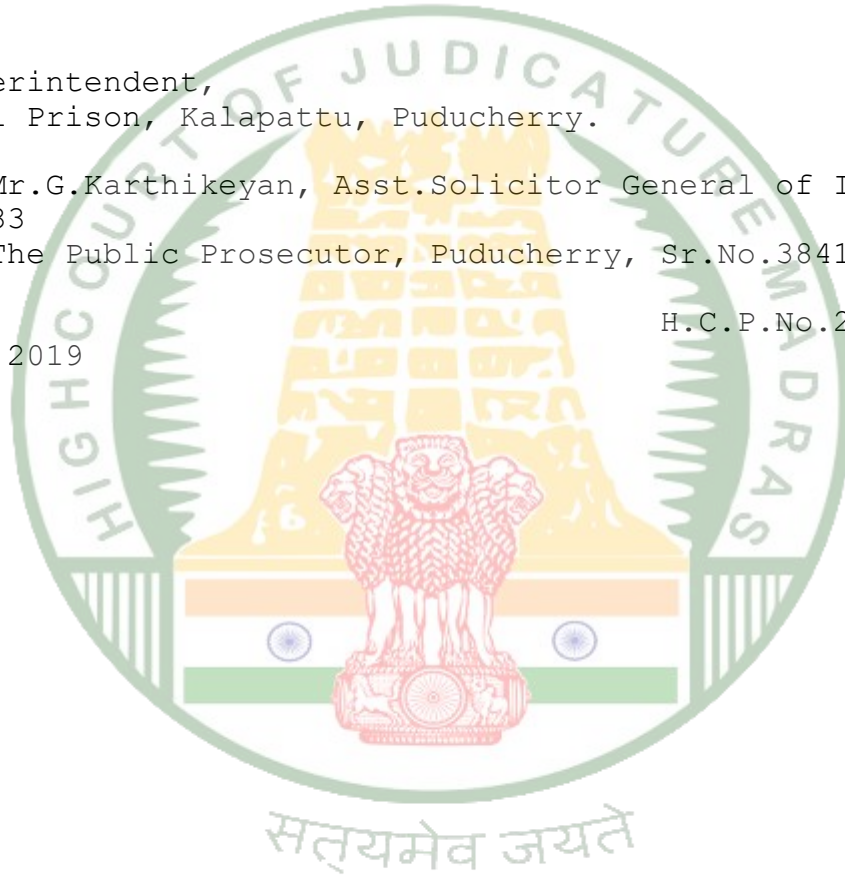
6.The Superintendent,
Central Prison, Kalapattu, Puducherry.

+1 cc to Mr.G.Karthikeyan, Asst.Solicitor General of India,
Sr.No.37633

+1 cc to The Public Prosecutor, Puducherry, Sr.No.38413

H.C.P.No.2530 of 2018

CSL/27.06.2019



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