

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM :

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

H.C.P.No.2531 of 2018

Bharathi @ Mohanraj,
aged 22 years,
S/o.Madesh,
D.No.7/85, Kalaingar Colony,
High School Medu,
Veerapandi Village,
Attaiyampatti Police Station Limit,
Salem South Taluk,
Salem District. .. Petitioner/Detenu

Vs.

- 1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort Saint George,
Chennai - 600 009.
- 2.The District Magistrate and
the District Collector,
Salem District.
- 3.The Director General of Police,
Government of Tamil Nadu,
Chennai.
- 4.The Union of India,
represented by its
Secretary to Government,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 100 001. ... Respondents

[Respondents 3 and 4 are suo motu impleaded
as per the order dated 02.11.2018]

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records of the second respondent made in the Detention Order No.C.M.P.No.33/Goonda/C2/2018, dated 27.09.2018 and quash the same and direct the respondents to produce the petitioner viz., Bharathi @ Mohanraj, son of Madesh, now undergoing detention in Central Prison, Salem, before this Court and set him at liberty.

For petitioner : Mr.K.V.Sridharan

For Respondents: Mr.M.Mohamed Riyaz, Addl. P.P.
for R.1 to R.3

O R D E R

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

The petitioner/detenu has challenged the detention order passed against him by the second respondent in C.M.P.No.33/Goonda/C2/2018, dated 27.09.2018 detaining him as "Goonda" as contemplated under Section 2(f) of the 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 in G.O(D) No.162, Home, Prohibition and Excise (XVI) Department, dated 18.07.2018 under sub-section (2) of Section 3 of the said Act.

2. The ground case registered against the petitioner/detenu is in Cr.No.288 of 2018 under Sections 341, 294(b), 392 read with Section 397 I.P.C., on the file of Attaiyampatti Police Station, Salem District. Since he is considered to be a Goonda, he was detained under Goondas Act vide order dated 27.09.2018 passed by the second respondent. The said order of detention is challenged before this Court.

3. Heard Mr.K.V.Sridharan, learned counsel for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.

4. Though many grounds have been raised by the petitioner/detenu, the learned Counsel for the petitioner/detenu would submit that inordinate delay vitiates the detention order and in this regard, he relied upon 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. Further, he would submit that no bail

application has been filed by the petitioner/detenu and the same is pending before the Court. However, the detaining authority found that there is a possibility of the petitioner/detenu coming out on bail as in similar cases, accused were granted bail.

5. A perusal of the records would reveal that there is one adverse case is pending in Cr.No.287 of 2018 for the alleged offences under Sections 147, 148, 323, 324, 302 I.P.C., on the file of Attaiyampatti Police Station, Salem District. As stated by the detaining authority in paragraph 5 of the detention order, the petitioner has not filed any bail application and therefore, there is no possibility of the petitioner/detenu coming out on bail.

6. Further, the petitioner/detenu was arrested on 11.08.2018 and the detention order was passed on 27.09.2018 and there is a delay of 46 days. As rightly relied on by the learned Counsel for the petitioner/detenu, the Division Bench of this Court in Ramesh v. District Collector and District Magistrate, Tiruchirappalli District and another reported in 2005 MLJ (Crl.) 752, held that inordinate delay in passing the detention order would vitiate the detention order. 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....."

7. In view of the above decision rendered by the Division Bench of this Court, the detention order passed by the second respondent dated 27.09.2018 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.

8. In the result, this Habeas Corpus Petition is allowed and the detention order passed by the second respondent in C.M.P.No.33/Goonda/C2/2018, dated 27.09.2018, is hereby set aside. The detenu, viz., BHARATHI @ MOHANRAJ, Son of Madesh, aged about 22 years, who is now confined at Central Prison, Salem, is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rsb

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort Saint George,
Chennai - 600 009.
- 2.The District Magistrate and
the District Collector,
Salem District.
- 3.The Director General of Police,
Government of Tamil Nadu, Chennai.
- 4.The Secretary to Government,
Union of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi - 100 001

5. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, chennai 9

6. The Superintendent,
Central Prison,
Salem.

7.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2531 of 2018

PP (CO)
GN (03/05/2019)



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