

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.2969 of 2018

Lakshmi

.. Petitioner

Vs.

- 1.The Secretary to Government,
Government of India,
Ministry of Home Affairs, (Department of Internal Security)
North Block, New Delhi - 110 001.
- 2.The Additional Secretary to Government (Home),
Government of Puducherry,
Chief Secretariat, Gubert Avenue,
Pudhucherry - 605 001.
- 3.The District Magistrate cum Authorized Officer,
1st Floor, Vazhadvavoor Road,
Kavundanpalayam, Puducherry - 605 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, call for the entire records No.15/DM/RO/D2/PPASAA/2018 dated 10.12.2018 on the file of the third respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Ganesh @ Kannukutti Ganesh @ Anandh, Son of Gurusamy, aged about 34 years, who now confined in Central Prison, Pudhucherry, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.Gandhi Kumar

For Respondents: M/s.S.S.Palaniraja - for R1
Central Government Standing Counsel
Mr.R.Bharatha Chakravarthy
For R2 & R3

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 the third respondent vide Proceedings in No.15/DM/RO/D2/PPASAA/2018 dated 11.12.2018, whereby the detenu, by name, Ganesh @ Kannukutti Ganesh @ Anandh, son of Gurusamy, aged about 34 years, was ordered to be detained under Section 3(2) of the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act No.10 of 2010) as a "DANGEROUS PERSON".

2. The detenu has come to adverse notice in the following cases:-

S.No.	Police Station & Crime No.	Section of Law
1.	PS Grand Bazaar Cr.No.37/2018	147, 148, 302, 212, 120-B IPC r/w 149 IPC
2.	PS Mettupalayam Crime No.96/2014	302 IPC r/w 34 IPC @ 148, 302, 120B, 109 IPC r/w 149 IPC @ 148, 302, 120-B, 109, 212 IPC r/w 149 IPC
3.	Kottakuppam P.S. Crime No.156/2013	148, 324, 302 IPC @ 147, 148, 341, 120(b), 302 IPC r/w 149 IPC
4.	Mettupalayam PS Crime No.57/2007	147, 148, 452, 302 IPC r/w 149 IPC
5.	Mettupalayam PS Crime No.95/2005	147, 148, 324, 302 r/w 149 IPC
6.	Mettupalayam PS Crime No.55/2014	324, 323, 506(i) IPC r/w 34 IPC
7.	Grand Bazaar PS Crime No.458/2007	324, 506(ii) IPC r/w 34 IPC
8.	Mettupalayam PS Crime No.60/2004	341, 323, 506(1) r/w 34 IPC
9.	Mettupalayam PS Crime No.52/2000	452, 324 r/w 34 IPC
10.	Mettupalayam PS Crime No.27/2010	25(i-a) of Arms Act 1959

The ground case has been registered against the detenu in Cr.No.84/2017 on the file of Mettupalayam Police Station for offences u/s. 147, 148, 342, 302, 307 IPC r/w 149 IPC and 3 and 4 of Explosives Substances Act 1908 @ 148, 109, 120-B, 144, 114, 342, 302, 307, 326, 324 IPC r/w 149 IPC and 3 and 4 of Explosives substances Act 1908. The detention order has been passed by third respondent in No.15/DM/RO/D2/PPASAAA/2018 on 11.12.2018.

3. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.84/2017 on 22.05.2018; whereas the detention order was passed on 11.12.2018, i.e. Nearly after a lapse of 194 days. 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 (CrL.) 752 (Ramesh v. District Collector and District Magistrate, Tiruchirapalli District and another).

5. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6. We have heard the learned counsel for both sides with regard to the facts.

7. 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 11.12.2018. Further, the detenu was arrested in the ground case as early as on 22.05.2018. This shows an inordinate delay of nearly 194 days in passing the detention order. There is no explanation forthcoming on the side of the respondents for this inordinate delay in passing the detention order. 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. 6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.15/DM/RO/D2/PPASAA/2018 dated 11.12.2018, passed by the third respondent is set aside. The detenu, namely, Ganesh @ Kannukutti Ganesh @ Anandh, Son of Gurusamy, aged about 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

kkn

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of India,
Ministry of Home Affairs, (Department of Internal Security)
North Block, New Delhi - 110 001.
2. The Additional Secretary to Government (Home),
Government of Puducherry,
Chief Secretariat, Gubert Avenue,
Pudhucherry - 605 001.
3. The District Magistrate cum Authorized Officer,
1st Floor, Vazhadvavoor Road,
Kavundanpalayam, Puducherry - 605 009.
4. The Superintendent of Prison,
Central Prison,
Kalapet, Puducherry.
5. The Public Prosecutor, (Puducherry)
High Court, Madras.

H.C.P.No.2969 of 2018

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