

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 28.01.2019****CORAM:****THE HON'BLE Mr. JUSTICE R.SUBBIAH****AND****THE HON'BLE Mr. JUSTICE B.PUGALENDHI****H.C.P. (MD) No.1396 of 2018**

Mahalakshmi

... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

3.The Superintendent of Police,
Tiruchirappalli Central Prison,
Tiruchirappalli District.

... Respondents

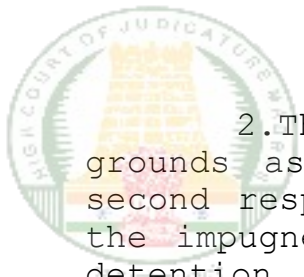
PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in Cr.M.P.No.32/2018 dated 13.09.2018 and quash the same and direct the respondents to produce the person or body of the detenu by name, Santhosh @ Pulukkai aged about 25 years, son of Venkatachalam, now detained at Trichy Central Prison before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan, APP

ORDER**(Order of the Court was made by R.SUBBIAH,J.)**

The detenu has been detained by the second respondent by order in Cr.M.P.No.32/2018 dated 13.09.2018 holding him to be a Goonda as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1962. This order is under challenge in this Habeas Corpus petition.



2. The learned counsel for the petitioner raised several grounds assailing the impugned order of detention passed by the second respondent, primary among them is 30 days delay in passing the impugned order of detention, which would vitiate the order of detention. Therefore, the learned counsel for the petitioner would contend that the impugned order of detention cannot be sustained under law and he prayed for setting aside the order of detention.

3. We have heard the learned counsel for petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the materials placed on record, including the order of detention passed by the second respondent, which is impugned in this Habeas Corpus Petition.

4. In the present case, the learned counsel for the petitioner would mainly contend that there is a delay in passing the impugned order of detention and there is no necessity at all for the detaining authority to pass the detention order after 30 days of the arrest of the detenu in connection with the ground case. We find much force in such submission of the learned counsel for the petitioner. In this context, we are fortified by the decision of this Court in the case of **(Ramesh vs. District Collector and District Magistrate, Tiruchirapalli District and another)** reported in **2005 MLJ (Crl) 752** wherein it was 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.N o. 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:-



preventive orders...."

5. Taking note of the ratio laid down in the above decision and the fact that the impugned order has been passed by the second respondent after 30 days of arrest of the detenu in connection with the ground case, we are of the view that the petitioner has to succeed in getting the detention order quashed on the ground of delay in passing the same. Even though the Detaining Authority may require some time for collecting the material particulars about the detenu before passing an order of detention, an explanation in that direction is virtually absent in the impugned order of detention. Therefore, this Court is of the view that after such an extended period, there is no necessity at all for the detaining authority to pass the order of detention branding the detenu as a Goonda. Therefore, on the ground of delay in passing the impugned order of detention, we are inclined to set aside the impugned order.

6. In the result, the Habeas Corpus petition is allowed and the detention order passed by the second respondent in his proceedings in Cr.M.P.No.32/2018 dated 13.09.2018 is quashed. The detenu, namely, Santhosh @ Pulukkai, aged about 25 years, son of Venkatachalam, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

sd/
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
3. The Superintendent of Police,
Tiruchirappalli Central Prison,
Tiruchirappalli District.
4. The Joint Secretary to Government,
Public (Law & order),
Fort St. George, Chennai-9.



5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

nbj நிபந்தனை

KK-AE/05.04.2019/4P/6C

H.C.P. (MD) No.1396 of 2018
28.01.2019