

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.No.2532 of 2019

Valli

...Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police / Detaining Authority,
Tiruppur City,
Tiruppur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 31.10.2019 on the file of the second respondent herein made in proceedings Memo C.No.15/G/IS/2019, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's son namely Udhaya @ Udhayakumar S/o.Poongavanam aged 23 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

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

O R D E R

(Order of the court was made by MRS.R.HEMALATHA.J.,)

Challenge is made to the Order of detention passed by the second respondent viz., the Commissioner of Police against the detenu viz., Udhaya @ Udhayakumar S/o.Poongavanam aged about 23 years vide proceedings in C.No.15/G/IS/2019 dated 31.10.2019,

since a prosecution was initiated against the detenu for the alleged offence punishable under Sections 147, 148, 294(b), 342, 120(b), 506(ii), 302 of Indian Penal Code read with 3 (i) of Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992 in Cr.No.895 of 2019 on the file of the Inspector of Police, L & O, North Police Station, Tiruppur District.

2.Heard Mr.W.Camyles Gandhi, learned Counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor for the respondents.

3.Mr.W.Camyles Gandhi, learned Counsel appearing for the petitioner contended that the order of detention is liable to be set aside on the following grounds;

(i)Order of detention has been passed after a period of twenty seven days from the date of arrest.

(ii)There is an abnormal delay in considering the representation given by the detenu.

4.I Ground: The learned Counsel appearing for the petitioner drew the attention of this Court to the order passed by the detaining authority / second respondent and contended that though the detenu was arrested on 03.09.2019, the Order of detention was passed only on 31.10.2019.

5.In the decision of this Court in "Praveena Vs. State of Tamil Nadu and other" in H.C.P.No.2606 of 2018 dated 30.01.2019 this Court has held as follows:

"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 17.10.2018. Further, the detenu was arrested in the ground case as early as on 16.09.2018. This shows an inordinate delay of nearly 30 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 second 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."

6.II Ground: It is seen from the records that there is a delay of 27 days in considering the representation submitted by the detenu.

7. In the decision in "C.Muthuvali Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai - 600 009" reported in "[(2017) (1) MWN (Cr.) 270 (DB)]" it has been held that an unexplained delay of nine working days on the part of the Government in considering the representation rendered the decision illegal. Another Division Bench of this Court in "Samaiah Vs. The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" has held that an unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order.

8. Further, a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" has held that "Preventive detention is by nature repugnant to

democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles".

9.Hence on both the above grounds, the detention order passed by the second respondent is liable to be set aside.

10.Accordingly, this petition is allowed by setting aside the Order of detention passed by the second respondent in proceedings Memo C.No.15/G/IS/2019 dated 31.10.2019 and the detenu is directed to be set at liberty forthwith, unless his detention is required in connection with any other case. It is also made clear that this order will not affect the criminal cases pending against the detenu.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,
Chennai - 600 009. सत्यमेव जयते
- 2.The Commissioner of Police / Detaining Authority,
Tiruppur City,
Tiruppur District.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St George, Chennai-9

5.The Additional Public Prosecutor,
High Court of Madras,
Chennai.

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RR(CO)
GMV(11/06/2020)



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