

(2013) 11 MAD CK 0232

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 792 of 2013

Rajendran

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) CriLJ 1997

Hon'ble Judges : V. Dhanapalan, J;R. Karupppiah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner is the wife of the detenu, who has been branded as a "Goonda" as contemplated under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers, and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) and detained under order of the second respondent passed in Cr. M.P. No. 18/Goonda/2013 dated 3-7-2013, has come before this Court to quash the order of detention passed by the second respondent. The detenu came to adverse notice in the following cases:

(See Table below)

2. The alleged ground case has been registered against the detenu on 16-6-2013 by the Emaneswaram Police, in Crime No. 67 of 2013 for offences under Sections 307, IPC r/w 5 of Explosives Act. Aggrieved by the order of detention, the present Habeas Corpus Petition has been filed.

3. Though the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he mainly focused his arguments on the ground that there is an inordinate and unexplained delay in considering the petitioner's representation dated 15-7-2013, which has not been explained. Therefore, there is a deprivation of right guaranteed under Art. 22(5) of the Constitution of India and as such, the impugned order is vitiated on the ground of delay.

4. We have heard the learned counsel for the petitioner and Mr. C. Mayilvahana Rajendran, learned Additional Public Prosecutor on the above submissions and we have also perused the records carefully.

5. In paragraph No. 5 of the grounds of detention, it has been stated as follows:

5. I am aware that Thiru. Sampath aged 27/13, S/o. Rajendran, Anna Nagar, Paramakudi, Ramanathapuram District has filed a bail petition in connection with ground case in Cr. No. 67/13 u/S. 307, IPC r/w 5 of Explosive Substances Act of Paramakudi Town Police Station as per Cr. M.P. No. 1637/2013 in the Court of Sessions Judge, Ramanathapuram and it is pending. Further the accused filed anticipatory bail petition in the adverse case in Cr. No. 128/10 u/Ss. 147, 148, 294(b), 341, 324, 307 and 34, IPC, Cr. No. 13/12, u/Ss. 307, IPC r/w. 3, 4, 5 of Explosive Substances Act 1908 and 4 of TNPPDL Act, 1984 of Paramakudi town Police station, Cr. No. 449/12 u/Ss. 147, 148, 341, 294(b), 307, 302, IPC r/w. 3 of TNPPDL Act of Paramakudi Town Police Station, Cr. No. 147/12 u/Ss. 147, 148, 323, 324, 307 and 302, IPC r/w 3 of TNPPDL Act of Emaneswaram Police Station, Cr. No. 58/2013, u/Ss. 147, 148, 294(b), 323, 324, 506(ii), IPC of Emaneswaram in the Courts and anticipatory bail was granted. Another adverse cases the accused was filed bail petitions in connection with Cr. No. 204/07. u/Ss. 294(b), 323, 325, 427, 506(ii), IPC and 34, IPC, Cr. No. 220/10 u/Ss. 294(b), 353, 506(i), IPC and 2(b) of Tamil Nadu Open Places Disfigurement Act 1959 of Paramakudi Town Police Station as per Cr. M.P. No. 3236/2007 and Cr. M.P. No. 4588/10 respectively in Judicial Magistrate Court, Paramakudi and the bail were granted to the

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accused. If he is not detained under Tamilnadu Act 14 of 1982 he will indulge in such further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru. Sampath, aged 27/13, S/o. Rajendran, Anna Nagar, Paramakudi, Ramanathapuram District is a Goonda and there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provision 2(f) of Tamil Nadu Act 14/1982.

6. On verification, it is seen that the petitioner has made a representation to the 1st respondent on 15-7-2013. However, the same was received by the respondents on 19-7-2013 and thereafter, remarks were called for on 22-7-2013, but remarks were received only on 26-7-2013. Thereafter, the Under Secretary and Deputy Secretary to Government dealt with the file on 29-7-2013 and the Minister for Electricity dealt with the file on 2-8-2013 and ultimately, the representation was rejected on 5-8-2013 and the rejection order was sent to the detenu on 6-8-2013. While examining the above position, it is evident that there

is a delay of six days, after giving concession for intermittent Saturdays and Sundays, in considering the representation of the petitioner, which would vitiate the impugned detention order.

7. In similar circumstances, the Hon''ble Supreme Court, in the case of Rashid Kapadia Vs. Medha Gadgil and Others, , has held as follows:

12. It can be seen from the above extracted portion that the first respondent called for the parawise remarks of the sponsoring authority (Customs Department) on 9-8-2011. However, the sponsoring authority responded to the inquiry of the first respondent on 26-8-2011 with a delay of fifteen days. The reasons for such delay have not been explained by the sponsoring authority, represented by the third respondent herein. There is nothing on the record placed before us, which explains the abovementioned delay on the part of the third respondent's Department.

13. It is well settled that the right of a person, who is preventively detained to make a representation and have it considered by the authority concerned as expeditiously as possible, is a constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of judgments where the principle is discussed in detail.....

14. Therefore, we have no option but to come to the conclusion that the detention order cannot be sustained on the above mentioned ground alone and it is required to be, accordingly, set aside.

8. Taking note of the ratio laid down by the Hon''ble Supreme Court in the above judgment and considering the facts of the case, the impugned detention order passed by the second respondent, detaining the detenu, namely, Sampath S/o. Rajendran, made in Cr. M.P. No. 18/Goonda/2013 dated 3-7-2013, is liable to be quashed. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention passed by the third respondent in Cr. M.P. No. 18/2013 dated 3-7-2013 is quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case. However, we make it clear that it is for the respondents to take note of the gravity of the offence and they shall prosecute the case before the trial Court without being influenced by this order. Likewise the detenu shall not take any advantage of this order in any of his regular proceedings.