

(2013) 11 MAD CK 0305

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 797 of 2013

S. Prakash

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) CriLJ 1737

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

Bench : Division Bench

Judgement

V. Dhanapalan, J.—The petitioner is the detenu, who has been branded as "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 Detention No. 16/2013 dated 8-7-2013, 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:

2. The alleged ground case has been registered against the detenu on 24-6-2013 by the Palani Taluk Police Station, in Crime No. 123 of 2013 for offences under Sections 294(b), 324 and 506(ii) IPC and for Section 392 IPC in Crime No. 242/2013 on the file of the Palani Taluk Police Station. 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 focussed 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 Article 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. S. Prakash is in remand at Sub Jail Palani in connection with Palani Taluk Police Station, Cr. No. 123/2013 u/Ss. 294(b), 324, 506(ii) IPC and Palani Taluk PS Cr. No. 242/2013 u/S. 392 IPC. The accused S. Prakash filed a bail petition in the court of Judicial Magistrate, Palani in Cr. M.P. No. 4672/2013 in Palani Taluk PS Cr. No. 123/2013 u/Ss. 294(b), 324, 506(ii) IPC and dismissed on 4-7-2013. Further, the accused S. Prakash filed bail petitions in the court of Judicial Magistrate, Palani in Cr. M.P. Nos. 4554/2013 and 4694/2013 in Palani Taluk PS Cr. No. 242/2013 u/S. 392 IPC and both the bail petitions were dismissed on 1-7-2013 and 4-7-2013 respectively. In similar case 1) Palani Taluk PS Cr. No. 489/2009 u/Ss. 457 and 380 IPC the accused S. Prakash was released on conditional bail by Judicial Magistrate, Palani in Cr. M. P. No. 4134/2010 dated 28-7-2008 and 2) Palani Taluk PS Cr. No. 558/2009 u/Ss. 392 IPC @ 457 and 392 IPC, the accused S. Prakash was released on condition bail by judicial Magistrate Palani, in Cr. M.P. No. 3007/2011 dated 28-6-2011. Hence, there is a real possibility of his coming out on bail by filing a bail application for the above cases before the same/higher Court. If he comes out on bail, 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. S. Prakash is also 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 provisions 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 17-7-2013 and thereafter, remarks were called for on 17-7-2013, but remarks were received only on 7-8-2013. Thereafter, the Under Secretary and Deputy Secretary to Government dealt with the file on 8-8-2013 and the Minister for Electricity dealt with file on 13-8-2013 and ultimately, the representation was rejected on 14-8-2013 and the rejection order was sent to the detenu on 16-8-2013. While examining the above position, it is evident that there is a delay of fifteen 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 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, S. Prakash, S/o. Senkuttuvan, made in Detention Order. No. 16/2013 dated 8-7-2013, is liable to be quashed. In the result, the Habeas Corpus Petition is allowed and the impugned order of detention passed by the second respondent in Detention Order No. 16/2013 dated 8-7-2013 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.