

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

H.C.P. No. 39 of 2019

Devi

..Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition & Excise
Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of
Police (Goondas Section),
Vepery, Chennai - 600 007.

..Respondent

Prayer: Prayer: Petition under Article 226 of the Constitution of India for issue of a Writ of Habeas Corpus to call for the entire records connected with the detention order of the 2nd respondent in No.1128/BCDFGISSSV/2018 dated 10.12.2018 and quash the same and direct the respondents to produce the body and person of the petitioner's husband namely Venkatesh, S/o. Govindan, aged about 42 years detained in Central Prison, Puzhal, Chennai before this Honourable Court and set him at liberty forthwith.

For Petitioner :: Mr.Mohammed Ansar

For Respondents :: Mr.R. Prathap Kumar,
Addl. Public Prosecutor

O R D E R

N. KIRUBAKARAN, J.

The wife of the detenu has moved this Habeas Corpus Petition challenging the order of detention passed by the 2nd respondent dated 10.12.2018 in No. 1128/BCDFGISSSV/2018 by which the detenu

Venkatesh, S/o. Govindan, aged about 42 years has been branded as a 'Goonda' and detained under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) read with the order issued by the Government of Tamil Nadu in G.O.(D) No. 216, Home, Prohibition and Excise (XVI) Department dated 18.10.2018.

2. The ground case against the petitioner's husband/detenu was registered in Crime No. 1188 of 2018 under Section 302 IPC on the file of K-10, Koyambedu Police Station, Chennai. The detenu was arrested on 17.11.2018 and later on, produced before learned V Metropolitan Magistrate, Egmore, at Allikulam, Chennai - 3 and remanded to judicial custody till 30.11.2018. Further, his remand period was periodically extended upto 14.12.2018.

3. The Detaining Authority, on being satisfied, based on the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, passed the order of detention.

4. Learned counsel for the petitioner would primarily assail the detention order on the ground of delay stating that though the detenu was arrested on 17.11.2018, the detention order was passed on 10.12.2018. Therefore, the delay of 23 days in passing the order of detention would vitiate the same. The other ground of attack is that there was no bail petition pending filed by the detenu and therefore, the imminent possibility of the detenu coming out on bail is ruled out. Further, according to the learned counsel, though it is stated in the Grounds of Detention that the relatives of the detenu are taking steps to file a bail application and that in a similar case, registered at F-1, Chintadripet P.S.Cr.No. 809/2014 under Sections 147, 148, 341, 307 and 302 I.P.C., bail has been granted by the Principal Sessions Judge, Chennai, in CrI.M.P. No. 17395 of 2014 to the accused therein, the instant case is not similar in nature to the case in CrI.M.P. No.17395 of 2014 and there are no materials to substantiate the claim that the relatives of the detenu are taking steps to move bail application on behalf of the detenu. Therefore, the detention order is liable to be set aside on the above grounds is petitioner's counsel's submission.

5. However, learned Additional Public Prosecutor would defend the detention order.

6. Heard the learned counsel for the parties and perused the records meticulously.

7. It is evident from the records that the detenu was arrested on 17.11.2018 and the detention order was passed on 10.12.2018, nearly, after a lapse of 23 days. The said delay of 23 days proves fatal and vitiates the detention order in the light of the judgment of the Division Bench of this Court rendered in Ramesh V. District Collector and District Magistrate, Trichy District and another reported in 2005 MLJ (CRL.) 752. Besides, as rightly contended by the learned counsel for the petitioner, in paragraph No.3 of Grounds of Detention, it has been stated by the Detaining Authority himself that there was no bail petition pending filed by the detenu. That being so, the imminent possibility of the detenu coming out on bail is ruled out. As regards the similar case registered at F-1 Chintadripet P.S. Cr.No. 809 of 2014 wherein bail has been granted to the accused therein, the said case is not similar to the case of the detenu and sections invoked are different from the case on hand. Moreover, there is no material to substantiate the claim that relatives of the detenu are taking steps to move bail application on behalf of the detenu. In such circumstances, the conclusion/subjective satisfaction arrived at by the Detaining Authority for passing the order of detention is not sustainable.

8. For all the above reasons, the impugned detention order dated 10.12.2018 passed by the 2nd respondent in No. 1128/BCDFGISSSV/2018 is liable to be set aside and accordingly, it is set aside. The Habeas Corpus Petition is allowed. The detenu namely Venkatesh, S/o. Govindan aged about 42 years, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other proceedings/case.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

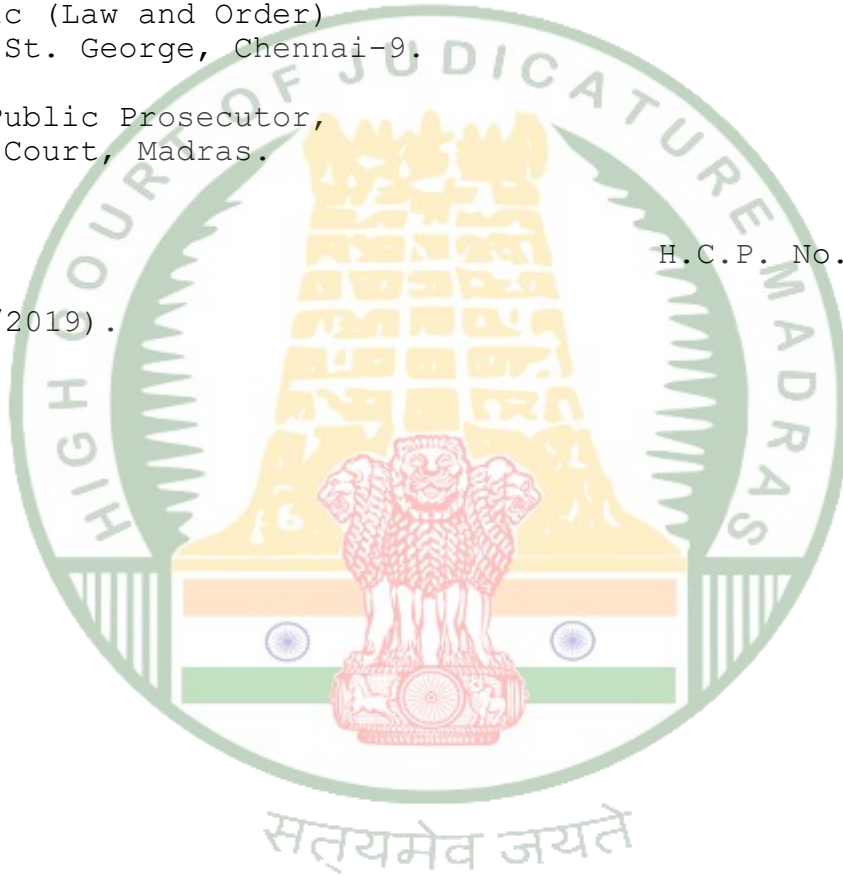
1. The Secretary to Government,
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Excise Department,
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2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of
Police (Goondas Section),
Vepery, Chennai - 600 007.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 39 of 2019

SV(CO)
SSM(30/04/2019).



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