

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.03.2019

CORAM:
THE HONOURABLE Mr. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

H.C.P.NO.207 of 2019

Mariammal

... Petitioner

-Vs-

State Rep. By

1. The Secretary to Government
Home, Prohibition and Excise Department.
Secretariat,
Fort St. George,
Chennai-9.

2. The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in S.C.No.41 of 2018 dated 05.07.2018 on the file of the District Collector and District Magistrate, Krishnagiri District, Krishnagiri, the second respondent herein and quash the same as illegal and direct the respondent to produce the detenu Rajkumar S/o. Raman, aged about 24 years now confined at Central Prison, Salem and set him at liberty.

For Petitioner : Mr.S.Rajanikanth

For Respondents: Mr.C.Iyyappa Raj
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.Sathyanaryanan,J.]

The petitioner is the sister of the detenu, who, vide impugned Order of Detention dated 05.07.2018 passed by the 2nd respondent by invoking Section 2(f) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Goonda', came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention would disclose among other things that the detenues came to adverse notice in

the following cases:

SI.No	Police Station and Crime No.	Section of Law	Date
1.	Kaveripattinam Police Station Crime NO.437/2015	457, 380 IPC	04.06.2015
2.	Kaveripattinam Police Station Crime NO.437/2015	457, 380 IPC	06.11.2015
3.	Kaveripattinam Police Station Crime NO.878/2015	454, 511 IPC	14.11.2015
4.	Kaveripattinam Police Station Crime NO.400/2015	457, 380 IPC	19.05.2016
5.	Kaveripattinam Police Station Crime NO.401/2015	454, 380 IPC	23.05.2016
6.	Krishnagiri KRP Dam Police Station Cr.No.188/2016	379 IPC	25.05.2016
7.	Krishnagiri Town Police Station Cr.No.377/2016	392 IPC	25.05.2016
8.	Kaveripattinam Police Station Crime NO.182/2018	454, 380 IPC	23.03.2018

3. It is further averred that on 27.03.2018 at about 17.30 hours, the defacto complainant namely Thiru.Narasimman, resident of Kaveripattinam, Krishnagiri District appeared before the Sub Inspector of Police, Krishnagiri District and lodged a written complaint stating that he along with his family are running a Fast Food and Tea Stall in the name and style of A.R.S, Nattankottai Branch Road, Krishnagiri - Dharmapuri National Highway and at about 04.11 p.m, one person came to his stall and taken food items and the defacto complainant demanded a sum of Rs.90/-for the food items and he took a knife and also threatened the defacto complainant with dire consequences and also stated him about the antecedents and also took a sum of Rs.2,300/- from the cash box and threatened him with dire consequences and when he raised an alarm, the public gathered and he also threatened the public by brandishing knife and taking advantage of the panic situation, fled away from the scene of occurrence. The Sub Inspector of Police, Kaveripattinam Police Station, upon receipt of the complaint, has registered a case in Cr.No.187 of 2019 for the commission of offences under

Sections 392, r/w 397, 506(ii) IPC and took up the investigation. The detenu was arrested on 28.03.2018 and he voluntarily came forward to give confession statement in the presence of witnesses and as per the admissible portion of the confession statement, some incriminating articles were seized and he was produced before the Court of Judicial Magistrate No.I, Krishnagiri and was ordered to be remanded to judicial custody till 11.04.2018 and it was further extended till 16.07.2018.

4. The Detaining Authority, namely the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already come to adverse notice in 8 cases and his acts are prejudice to the maintenance of public order and accordingly, clamped the impugned orders of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

5. The learned counsel appearing on behalf of the detenu would submit that the detenu is in judicial remand in connection with eight adverse cases as well as the ground case and admittedly he did not move any application for bail in both cases and the Detaining Authority, in order to arrive at a subjective satisfaction as to the real and imminent possibility of of him to come out on bail which are prejudicial to the maintenance of public order and peace, has relied upon in similar case registered by Krishnagiri Taluk Police Station against Thiru.Krishnan @ Kulla Krishnan in Cr.No.514/2016. The learned counsel would further state that though, the alleged incident relating to the ground case took place on 28.03.2018 and despite the fact that the petitioner did not file any bail application in the eight adverse cases as well as in the ground case, no plausible explanation has been offered in passing the impugned detention order and hence prays for quashment of the same.

6. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the detenu came to adverse notice in eight cases and in the ground case, he has also committed an offences under Section 392 r/w 397 and 506 (ii) IPC and therefore, the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and prays for dismissal of this petition.

7. This Court has considered the rival submissions and also perused the entire materials placed before it.

8. As rightly pointed out by the learned counsel appearing for the petitioner, the alleged incident relating to the ground case took place on 27.03.2018 and the detenu in the eight adverse cases, did not file any application for bail and despite

the said fact, the impugned order of detention came to be passed only 05.07.2018 with a delay of nearly 3 months and no explanation has been offered as to the belated passing of impugned order of detention. In the considered opinion of this Court, the said delay is fatal to the impugned order of detention and hence on the sole ground, it warrants interference.

9. Accordingly, the Habeas Corpus Petition stands allowed and the impugned Detention Order passed by the second respondent S.C.No.41 of 2018 dated 05.07.2018 is set aside and the detenu namely Rajkumar S/o. Raman, aged about 24 years is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (CS VI)

//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-9.
2. The District Collector and
District Magistrate,
Krishnagiri District,
Krishnagiri.
3. The Superintendent,
Central Prison, Salem.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai -9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.NO.207 of 2019

GJ-II (CO)

RRS (17/06/2019)