

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.297 of 2019

Sakthivel

.. Petitioner

Versus

1.State rep.by
Secretary to Government, Home,
Prohibition and Excise Department
Secretariat, Chennai-600 009.

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

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the detenu Sakthivel, son of Raju Boyan, and call for the records who is now detained in Central Prison, Coimbatore to set aside the order in pursuance of the Detention Order passed by the 2nd respondent on 24.08.2018 in Cr.M.P.No.18/Drug Offender/2018/C1 branding him as a "Drug Offender" before this Court and set the detenu at liberty forthwith.

For Petitioner : Mr.R.Ganesh
For Respondents: Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

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

The petitioner himself is the detenu herein and challenging the impugned order of detention dated 24.08.2018 under Section 2 (e) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Drug Offender', came forward to file this Habeas Corpus Petition.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the following case:

Sl.No.	Crime No.	Section of law	Date of occurrence
1.	Gobichettipalayam Police Station, Cr.No.916/2016	Section 457, 511 IPC	19.12.2016

It is further alleged in the grounds of detention that at about 07.30 hours on 17.07.2018, the Sub Inspector of Police, Gobichettipalayam, received reliable information as to the selling of Ganja by one Saradha, wife of Keerivayan @ Santhiyagu and accordingly, went to the spot and made a search and the detenu as well as the Saradha were found in possession of Ganga without any license or permission and subsequently both of them were arrested at about 17.07.2018. They voluntarily came forward to give a confession statement and based on the admissible portion of the confession statements, some incriminating articles were seized. The detenu as well as the co-accused were produced by the Sub Inspector of Police to the above said Police Station along with the seized contraband and a case in Cr.No.428/2018 was registered under Sections 20(b)(ii) (B) of Narcotic Drugs and Psychotropic Substances Act (ground case). The detenu as well as the co-accused were produced before the Court of Judicial Magistrate No.1, Gobichettipalayam on the same day and they were ordered to be remanded to judicial custody till 20.07.2018 and the remand period was further extended till 03.09.2018.

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

4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to the worksheet and would submit that for revoking the order of detention passed against the detenu, Nil dated post detention representation was submitted and the Deputy Secretary, Home, Prohibition and Excise (IX) Department had dealt with the same on 17.10.2018 and the Hon'ble Minister, Electricity, Prohibition and Excise had dealt with the same on 03.11.2018 and there was a delay of 15 days in between those days and even excluding 5 public holidays, still there was a delay of 10 days and in the absence of proper explanation, the said delay is fatal to the impugned order of

detention and therefore, prays for appropriate orders.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State by drawing attention of this Court to the worksheet would submit that the delay cannot be construed as fatal to the impugned order of detention and would further add that 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.

6. As rightly pointed by the learned counsel appearing for the petitioner, the Deputy Secretary, Home, Prohibition and Excise (IX) Department had dealt with the detenu's representation on 17.10.2018 and the Honble Minister, Electricity, Prohibition and Excise had dealt with the same on 03.11.2018 and there was a delay of 15 days in between those days and even excluding 5 public holidays, still there was a delay of 10 days in dealing with the representation and no plausible or tenable explanation has been offered on behalf of the respondents as to the said delay. In the considered opinion of this Court, the delay in dealing with the representation is violates the valuable right guaranteed to the detenu under Article 22 of the Constitution of India and hence on the sole ground, it warrants interference.

7. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 24.08.2018 in Cr.M.P.No.18/DRUG OFFENDER/2018/C1 is set aside and the detenu namely Thiru.Sakthivel, aged 53 years, son of (late) Raju Boyan, who is now confined at Central prison, Coimbatore is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

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

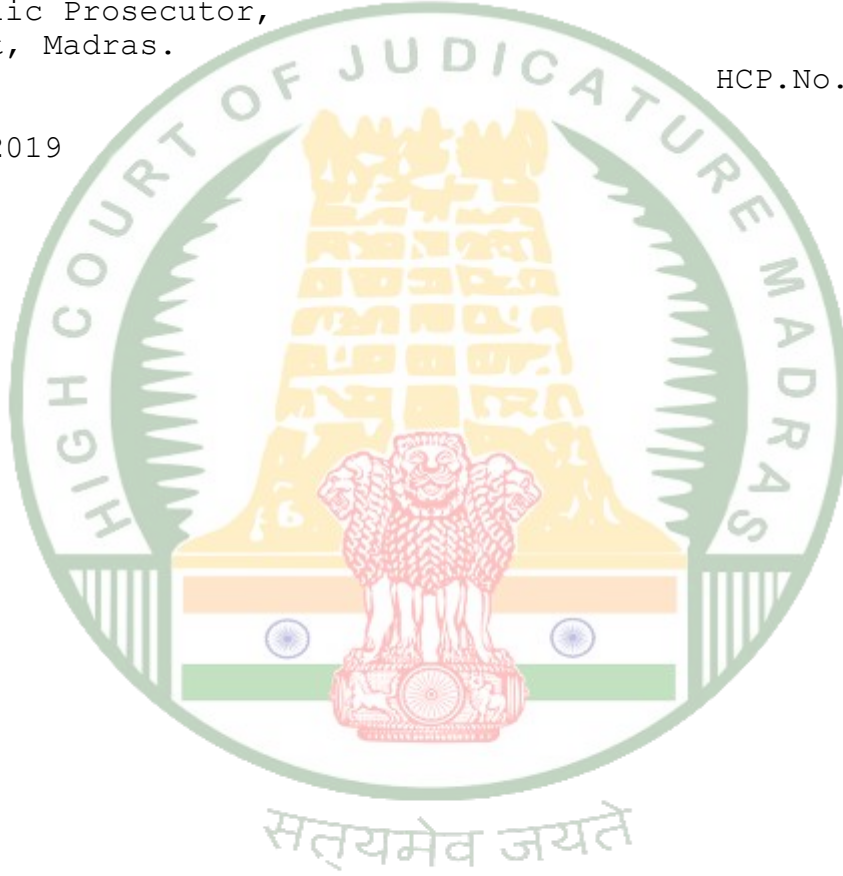
3.The Superintendent,
Central Prison,
Coimbatore.

4.The Joint Secretary to Government,
Public(Law & Order)
Fort St.George, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

HCP.No.297 of 2019

nr 02/07/2019



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