

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 26.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.298 of 2019

Khushruba

.. Petitioner

Versus

1.State of Tamil Nadu
Rep.by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Detaining Authoriy,
Coimbatore City.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus to call for the entire records, relating to his friend detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 09.05.2018 on the file of the second respondent herein made in proceedings on the file of the second respondent herein made in proceedings C.No.49/G/IS/2018 quash the same as illegal and consequently direct the respondents herein to produce his friend namely Dhagi Ali (A) Dhagi, son of Alikhan Syed, aged 43 years before this Court and set his friend at liberty from detention, now detained at Central Prison, Coimbatore.

For Petitioner : Mr.C.C.Chellappan

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

ORDER

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

The petitioner is the friend of the detenu and challenging the impugned order of detention dated 09.05.2018 passed by the 2nd respondent by invoking Section 2 (f) of the Tamil Nadu Act 14 of 1982, branding the detenu as 'Goonda', the present Habeas Corpus Petition is filed.

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

Sl.No.	Crime No.	Section of law	Date of occurrence
1.	Coimbatore City, B-2 R.S.Puram Police Station Crime No.1066/2017	170, 420 IPC	08.10.2017
2.	Coimbatore City, E-3 Saravanampatty Police Station Crime No.816/2017	420 IPC	14.10.2017
3.	Coimbatore City, D-1 Ramanathapuram Police Station Crime No.9/2018	420 IPC	04.01.2018
4.	Coimbatore City, B-2 R.S.Puram Police Station Crime No.101/2018	420 IPC	25.01.2018

It is further averred in the grounds of detention that the defacto complainant namely Mr.B.Ramesh Kumar, a resident of R.S.Puram, Coimbatore have lodged a complaint on 31.01.2018 on the file of the B-3 Variety Hall Road Police Station, Coimbatore City alleging that while he was proceeding in his two wheeler near Salivan Street, two persons which including the detenu came in motorcycles and signaled the complainant to stop and when the defacto complainant stopped his vehicle, they get down from their motorcycles and snatched a gold chain weighing 2 ½ sovereigns from the neck of the complainant. When the complainant resisted, the duo suddenly drawn knives and threatened him and other three persons also came in the car and all of them threatened the complainant at knife point and snatched his 2 ½ sovereigns chain. When the defacto complainant raised an alarm, the public gathered. The accused also threatened the public and taking advantage of the panic situation, fled away from the scene of occurrence. The Special Sub-Inspector of Police, Crime, B-3 Variety Hall Road Police Station upon receipt of the complaint, has registered a case in Cr.No.155/2018 under Section 395 r/w 397 IPC and took up the investigation.

3. The detenu was arrested on 01.02.2018 and he voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized. The detenu was produced before the Court of Judicial Magistrate No.V, Coimbatore, on 02.02.2018 and was ordered to be remanded to judicial custody

till 15.02.2018 and the remand period was further extended till 15.05.2018.

4. The Detaining Authority, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, has already come to adverse notice in four cases 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.

5. The learned counsel appearing on behalf of the detenu would submit that for revoking the order of detention, post detention representations dated 30.01.2019 was submitted and the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the said representation on 15.02.2019 and the Hon'ble Minister for Electricity and Prohibition and Excise Department has dealt with the same on 23.03.2019 and there was a delay of 34 days and even excluding 11 days public holidays, still there was a delay of 23 days in dealing with the said representation and in the absence of any proper explanation, the said delay is fatal to the impugned order of detention and prays for quashment of the same.

6. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that in the above facts and circumstances, considering the heinous act of the detenu, the delay cannot be considered as fatal and the Detaining Authority, with due and proper application of mind, has rightly reached the conclusion and clamped the impugned order of detention and prays for dismissal of this petition.

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

8. As rightly pointed out by the learned counsel appearing for the petitioner, the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the said representation on 15.02.2019 and the Hon'ble Minister for Electricity and Prohibition and Excise Department dealt with the same on 23.03.2019 and there was a delay of 34 days and even by excluding 11 days public holidays, still there was a delay of 23 days in dealing with the said representation. In the considered opinion of this Court, in the absence of any proper, tenable or plausible explanation, the said delay is fatal to the impugned order of detention for the reason that it has also caused prejudice to the Constitutional valuable right guaranteed to the detenu under Article 22 of the Constitution of India and on the same ground, the impugned order of detention warrants interference.

9. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in C.No.49/G/IS/2018, dated 09.05.2018 is set aside and the detenu namely Dhagi Ali (A) Dhagi, son of Alikhan Syed, aged 43 years detained in 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 VI)

//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 Commissioner of Police,
Detaining Authoriy,
Coimbatore City.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai -9.
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

HCP.No.298 of 2019

GJ-II(CO)

RRS (17/06/2019)

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