

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.355 of 2019

Karthick

... Petitioner

Versus

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

2.The District Collector and  
District Magistrate  
Coimbatore.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the 2<sup>nd</sup> respondent in Cr.M.P.No.12/G/2018/E1 dated 02.08.2018 against the petitioner Karthick, S/o.Jeyaraj, aged about 29 years, and who is detained in Central Prison, Coimbatore and set aside the same and produce him before this Court and set him at liberty.

For Petitioner: Mr.Philip Ravindran Jesudoss

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

ORDER

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

The detenu himself is the petitioner and challenging the impugned order of detention dated 02.08.2018 passed by the 2<sup>nd</sup> respondent under Section 2(f) 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 detenu came to adverse notice in the following case:

| SI.No | Police Station and Crime No.                                   | Section of Law  | Date                              |
|-------|----------------------------------------------------------------|-----------------|-----------------------------------|
| 1.    | Coimbatore District, Kovilpalayam Police Station Cr.No.67/2008 | Section 397 IPC | Between 16.05.2008 and 17.05.2008 |

It is further averred that on 20.12.2017 at about 23.00 hours, the defacto complainant namely Mr.Nagamanickam, son of Chinnappan lodged a complaint as to the murder of his mother and missing of articles and in this regard, he lodged a complaint, based on the which, Perur Police Station has registered a case in Cr.No.313 of 2017 under Section 302 IPC. During the course of investigation, call records of the mobile phone used by the deceased was collected and it came to know that one Manikandan is using the cell phone and based on his confession statement, identified the detenu Karthick, who sold the said cellphone to him and role played by the detenu was also admitted. He was arrested on 04.04.2018 at about 18.30 hours and his confession statement led to discovery of facts and incriminating articles. The detenu was produced before the Court of Judicial Magistrate No.1, Coimbatore for judicial custody and was ordered to be remanded to judicial custody till 19.04.2018 and his remand period was extended till 09.08.2018. The Detaining Authority namely, the 2<sup>nd</sup> 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.

3. The learned counsel appearing on behalf of the detenu would submit that for revoking the order of detention passed against the detenu, post detention representation dated 04.09.2018 was submitted. The Under Secretary as well as the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the same on 06.09.2018 and the Hon'ble Minister, Electricity, Prohibition and Excise had dealt with the same on 01.10.2018 and in between those days, there was a delay of 24 days and even excluding 9 public holidays, still there was a delay of 15 days in dealing with the said representation and in the absence of proper explanation, the said delay is fatal to the impugned orders of detention and therefore, prays for appropriate orders.

4. 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 2<sup>nd</sup> respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and prays for dismissal of this petition.

5. As rightly pointed by the learned counsel appearing for the petitioner, the Under Secretary as well as the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the representation submitted by the detenu on 06.09.2018 and the Hon'ble Minister, Electricity, Prohibition and Excise had dealt with the same on 01.10.2018 and even excluding public holidays, still there was a delay of 9 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 and in the considered opinion of this Court, the delay in dealing with the representation 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.

6. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 02.08.2018 in Cr.M.P.No.12/G/2018/E1 is set aside and the detenu, namely Thiru.Karthick, aged 29, S/o.Jayaraj, 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//

सत्यमेव जयते  
Sub Assistant Registrar

To

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

2.The District Collector and  
District Magistrate,  
Coimbatore.

3.The Superintendent of Prisons,  
Central Prison, Coimbatore.

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

5.The Public Prosecutor  
High Court, Madras.

HCP.No.355 of 2019

sv[co]  
srg 02/07/2019



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