

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.03.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2094 of 2018

M.Jafeer Sadiq .. Petitioner/Father of the Detenue

Versus

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Home, Prohibition and Excise,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai, Chennai City,
Vepery, Chennai - 600 007.

... 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 made in Memo.BCDFGISSSV No.735/2018 dated 21.08.2018 on the file of second respondent herein and quash the same as illegal and direct the respondents to produce the detenue RIYAS AHAMED, son of Jaffer Sadiq, aged about 24 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

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

ORDER

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

The petitioner is the father of the detenu, who vide impugned Order of Detention dated 21.08.2018 passed by the 2nd

respondent, has been branded as ''Goondas'' and detained under Section 2 (f) of the Tamil Nadu Act 14 of 1982.

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.	S-4 Nandambakkam Police Station Cr.No.735/2017	379 IPC	30.05.2017
2.	S-1 St.Thomas Mount P.S.Cr.NO.652/2017	379 IPC	30.06.2017
3.	S-9 Pazhavanthangal Police Station Cr.No.270/2018	379 IPC	01.07.2018

It is further averred that the defacto complainant namely Magesh, the resident of Madanandauram, Chennai-125 is running a flower plants shop near Woodcreek County Road. At about 20.00 hours, on 18.07.2018, he was proceeding by walk at the junction of Woodcreek County and he was waylaid by a person who came from opposite side and scolded in filthy language and slapped him and ask him to take money and snatched a sum of Rs.1,850/- from the shirt pocket of defacto complainant. When the said person threatened him at the point of knife, the defacto complainant raised an alarm and public gathered and the detenu threatened everyone and fled away from the scene of occurrence. The defacto complainant lodged a complaint, based on which, the Inspector of Police has registered a case in S-4, Nandambakkam Police Station Crime No.143/2018 under Sections 341, 294 (b), 323, 336, 397 and 506 (ii) IPC and took up the investigation and the concerned person was identified and he was arrested on 19.07.2018 at 09.30 hours and he is also admitted of his involvement in the three adverse cases and based on the admissible portion of his confession statement, some incriminating articles were seized. Later, the detenu was produced before the Court of Judicial Magistrate, Alandur, Chennai and he was ordered to be remanded to judicial custody till 31.07.2018 and the period of remand was extended till 24.08.2018 .

3. The 2nd respondent Authority, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime and has already come to adverse notice in three 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.

4. The learned counsel appearing on behalf of the detenu would submit that the representation dated 14.09.2018 has been submitted for revocation of the order of Detention and drawn attention of this Court to the worksheet and would submit that representation dated 14.09.2018 was received by the Home, Prohibition and Excise (X) Department on 18.09.2018 and the remarks were called and received on 24.09.2018 and excluding holidays, there was a delay of three days and further drawn attention of this Court to S.I Nos.12 and 13 and would submit that Deputy Secretary has dealt with the same on 27.09.2018 and the Minister for (Electricity, Prohibition and Excise) dealt with the same on 09.10.2018 and excluding holidays, once again there is a delay of 6 days and just there is a delay of 9 days in considering the said representation and since no tenable or proper explanation has been offered as to the said delay, the Detention Order is wholly vitiated and prays for quashment of the same.

5. Per contra, Mr.C.Iyapparaj, learned Additional Public Prosecutor would submit that there was no delay in considering and disposing of the said representation submitted on behalf of the detenu and would further add that the Detaining Authority, on proper application of mind to the relevant materials, has rightly reached the subjective satisfaction and clamped the order of detention and prays for dismissal of this Habeas Corpus Petition.

6. This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

7. As rightly pointed out by the learned counsel appearing for the petitioner, the representation was received by the Home, Prohibition and Excise (X) Department, on 18.09.2018 and remarks were called on the same day on 18.09.2018 and received on 24.09.2018 and excluding two days holidays, there was a delay of three days and in respect of Column Nos.12 and 13, there was 11 days gap and excluding holidays, there were a delay of 6 days and totally there was a delay of 9 days in considering the said representation.

8. In the considered opinion of this Court, no proper and tenable explanation has been offered for the delay in considering the representation of the detenu and on account of the same, the detenu has been deprived of the right available under Article 22 of the Constitution of India and on the same ground, the impugned Detention Order warrants interference.

9. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the 2nd respondent in Memo.BCDFGISSSV No.735/2018 dated 21.08.2018 is set aside and the detenu is set at liberty forthwith unless his detention /

custody is required in connection with any other case / proceedings.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Home, Prohibition and Excise,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Chennai City,
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 Director General of Police,
Tamil Nadu, Chennai -4.
- 6.The Additional Director General of Police,
Prisons, Chennai -8.
- 7.The Public Prosecutor,
HighCourt, Madras.

HCP.No.2094 of 2018

VBA (CO)

RRS (18/06/2019)

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