

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2375 of 2018

B.Sylendhar

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Fort.St.George
Chennai - 9.

2.The Commissioner of Police
Salem City
Salem.

3.The Inspector of Police
Ammamet Police Station
Ammamet
Salem.

... 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 on the file of the respondents relating to the impugned order of detention dated 13.09.2018 bearing Ref.C.M.P.No.64/Goonda/Salem City/2018 and quash the same and consequently set the detenu Siva @ Sivanandam, aged about 30 years at liberty, who is confined at Central Prison, Salem.

For Petitioner .. Mr.N.U.Prasanna
For Respondents.. Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The petitioner is the brother of the detenu and challenging the legality of the impugned order of detention

dated 13.09.2018 passed by the second respondent, in and by which, his brother, the detenu has been branded as a 'Goonda' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present Habeas Corpus Petition.

2. A perusal of the Grounds of detention order dated 13.9.2018 passed by the 2nd respondent herein, would disclose that the detenu came to adverse notice in the following cases:-
Adverse cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Ammapet Police Station (Cr.No.574/2017)	454 & 380 IPC
2	Kannankurichi Police Station (Cr.No.424/2017)	457 & 380 IPC
3	Ammapet Police Station (Cr.No.539/2017)	454 & 511 IPC

3. It is further alleged in the Grounds of detention that on 17.08.2018 at about 11.00 hours, the defacto complainant namely Chandrasekaran, the resident of Periya Veeranam, Salem has lodged a written complaint to the Sub Inspector of Police, Veeranam Police Station, stating that he is eking out his livelihood as an auto-driver and on the date of incident, at about 9.00 hours, when he was walking near Mannarapalayam Pirivu Bus Stop to go to Salem, two persons came in a two wheeler bearing (Hero Splendour) bearing Registration No.TN-18-M -6112, and they waylaid him at knife point and disclosed their identity to the defacto complainant that, they are known in that area for their notorious act and the people in the locality are scared of their activities, and would part the money they possess. The defacto complainant in order to escape from them, started to run. However, the detenues chased the defacto complainant and snatched a cash of Rs.2,000/- for his shirt pocket. The defacto complainant raised an alarm and the nearby public gathered there and they tried to secure the defacto complainant, but the detenues also threatened the public with dire consequences and they fled away from the scene of crime. The Sub Inspector of Police, Veeranam Police Station, based on the complaint given by the defacto complainant, has registered a case in Cr.No.344/2018, for the commission of the offences u/s.341, 392 r/w.397 IPC [ground case] and took up the case for investigation.

4. Both the accused were arrested by the Inspector of Police at 09.00 hours on 21.08.2018 and on enquiry, they voluntarily came forward with the confession statement and admitted their involvement in the ground case as well as in other cases and based on the admissible portion of the confession statement, incriminating articles were recovered and both the detainees were produced before the Judicial Magistrate No.4, Salem on the same date and was ordered to be remanded to judicial custody till 04.09.2018 in Central Prison, Salem and his remand period was extended till 18.09.2018.

5. The Detaining Authority on the basis of the materials placed, has arrived at the subjective satisfaction that the acts of the detenu in the adverse cases as well as in the ground case, are prejudicial to the maintenance of public order and as such, branded him as 'Goonda' and detained him under the Tamil Nadu Act 14 of 1982 and accordingly clamped the impugned order of detention and challenging the legality of the same, the present habeas corpus petition is filed.

6. The learned counsel for the petitioner would submit that pursuant to the detention order passed by the second respondent, detaining his brother in Central Prison, Salem as remand prisoner, branding him as "Goonda", the petitioner has submitted individual representations dated 03.10.2018 to the respondents 1 and 2 herein viz., the Secretary to Government, Home, Prohibition & Excise Department, Secretariat, Chennai, and the Commissioner of Police, Salem City, Salem, as well as to the Collector, Salem District and the Chairman of Advisory Board to revoke the order of detention and the said representations were acknowledged by the Detaining Authority, Advisory Board and Collector of Salem District on 04.10.2018 and 05.10.2018 respectively, and has further drawn the attention of this court to the worksheet and would submit that the representation dated 03.10.2018 was received by the Home, Prohibition & Excise (XIV) Department only on 26.10.2018, and there was a considerable delay on the part of the second respondent-Detaining Authority to forward the said representation to the Government and such delay is fatal to the impugned order of detention and prays for quashment of the same.

7. In response to the said submissions, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit all the representations submitted by the petitioner is similarly worded and after calling for remarks from the Detaining Authority, the representations submitted by the petitioner were disposed of without any loss of time and therefore, the delay pointed out by the learned counsel for the

petitioner may not be fatal and prays for dismissal of this petition.

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

9. A perusal of the additional typed set of documents and other materials, would disclose that the representation submitted by the petitioner to the second respondent, detaining authority was received at its end on 04.10.2018 itself, but it appears the said representation has been belatedly forwarded to the Government, the first respondent, who received it only on 25.10.2019 and further, no favourable or tenable explanation has been offered as to the belated forwarding of the representation by the second respondent to the first respondent.

10. In the considered opinion of the Court, no proper and plausible explanation has been offered as to the delay in considering the said representation and in the absence of such explanation, it is fatal and thereby, the valuable right of the detenu guaranteed under Article 22 of the Constitution of India, has been violated and hence, on this sole ground, the detention order, impugned herein, warrants interference.

11. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 13.09.2018 is hereby set aside. The detenu, viz., Siva @ Sivanandam, son of Mr. Balusamy, aged 30 years, who is now confined in the Central Prison, Salem, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To:

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

2. The Commissioner of Police
Salem City
Salem.

3.The Inspector of Police
Ammamet Police Station
Ammamet, Salem.

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

5. The Superintendent,
Central Prison, Salem.

6. The Public Prosecutor
High Court, Madras.

+1 cc to Mr.N.V.Prasanna, Advocate, Sr.No. 22177

CSL/26.04.2019

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