

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.2408 of 2018

Bhuvaneshwari

.. Petitioner

Vs.

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

2.The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008.

.. 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 second respondent dated 28.09.2018 vide order No.897/BCDFGISSSV/2018 against the petitioner's son Marimuthu @ Mari, S/o.Selvam, Male, aged 27 years, now confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the body of detenu before this Court and set him at liberty.

For Petitioner .. Mr.R.Ramamoorthy

For Respondents.. Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu and challenging the legality of the impugned order of detention dated 28.09.2018 passed by the second respondent, in and by which, her son, 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 28.9.2018 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	E4 Abiramapuram Police Station (Cr.No.332/2018)	379 IPC
2	E4 Abiramapuram Police Station (Cr.No.352/2018)	380 IPC
3	E4 Abiramapuram Police Station (Cr.No.353/2018)	380 IPC
4	E4 Abiramapuram Police Station (Cr.No.395/2018)	457 & 380 IPC
5	E4 Abiramapuram Police Station (Cr.No.493/2018)	380 IPC

3. It is alleged in the Grounds of detention that the defacto complainant named Mahendran, is the resident of Raja Annamalaipuram, and that on 26.08.2018 at about 22.00 hours, while he was returning to his home after meeting his relative and was proceeding to Sringeri Mutt Road, three persons came in a car, who under the guise of enquiring an address, wrongfully restrained him, and one among the three persons caught hold of the defacto complainant's hands and another person took a knife and pressed it over his stomach and other person checked the pocket of the defacto complainant and took a cash of Rs.800/- and a mobile phone, which he possessed. One of the accused who was holding a knife, made an attempt to attack the defacto complainant using the knife, however he saved himself by moving backwards, and thereafter, all the three accused kicked the defacto complainant and fled away from the scene of occurrence. Immediately, the defacto complainant proceeded to E4

Abiramapuram Police Station and lodged a case against all the accused, based on which, a case in Crime No.534/2018 came to registered for the commission of offences under Sections 341, 294(b), 392, r/w.397, 307 & 506 (ii) IPC [ground case] and took up the case for investigation.

4. All the accused were arrested by the Inspector of Police at 04.00 hours on 27.08.2018 and on enquiry, they voluntarily came forward to give 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 seized and all the detainees were produced before the XXIII Metropolitan Magistrate, Saidapet, Chennai on 28.08.2018 and they were ordered to be remanded to judicial custody till 11.09.2018 in Central Prison, Puzhal, Chennai, and their remand period was extended till 09.10.2018.

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 two representations dated 03.10.2018 have been submitted by the petitioner, to revoke the order of detention to the Chief Secretary to Government, Home, Prohibition & Excise Department, Secretariat, Chennai, and that the said representations have been dealt with by various authorities and that one of the said representation was received and in the Office of Minister for (Electricity and Prohibition and Excise) on 30.11.2018, and in between 16.11.2018 and 30.11.2018, there was 5 days Government Holidays and excluding the same, still there was a delay of 9 days in dealing with and disposing of the said representation, and since no proper and tenable explanation has been offered, such delay is fatal and prays for quashment of impugned order of detention.

7. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and 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 rightly pointed out by the learned counsel for the petitioner, there was a delay of 14 days in dealing with the petitioner's said representation by the Deputy Secretary, Home Prohibition and Excise (XIII) Department and the Hon'ble Minister for Electricity, Prohibition and Excise, and after deducting 5 days Government holidays i.e., in between 16.11.2018 and 30.11.2018, still there was a delay of 9 days, and that, no proper and tenable explanation has been offered by the officials concerned as to the delay in considering the said representation. Hence, in the considered opinion of this Court, 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.

10. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 28.09.2018 is hereby set aside. The detenu, viz., Marimuthu @ Mari, son of Mr. Selvam, aged 27 years, who is now confined in the Central Prison, Puzhal, 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

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To:

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

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008.

3. The Superintendent,
Central Prison,
Puzhal, Chennai 66.

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

5. The Public Prosecutor
High Court, Madras.

H.C.P.No.2408 of 2018

CSL/26.04.2019



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