

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2394 of 2018

Muthulakshmi

.. Petitioner

Versus

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

2.The Commissioner of Police,
Greater Chennai,
Chennai.

.. 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 records in connection with the order of detention passed by the 2nd respondent dated 28.09.2018 in No.900/BCDFGISSSV/2018 against the Son of the petitioner, detenu Kuppa @ Arunkumar, M/A 22, son of Baskar, who is confined at Central Prison, Puzhal and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at his liberty.

For Petitioner: Mr.K.S.Kavilarasu

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

ORDER

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

The petitioner is the mother of the detenu, who was detained by the 4th respondent, vide impugned proceedings dated 28.09.2018 under Tamil Nadu Act 14 of 1982 and challenging the legality of the said Detention Order, came forward to file this Habeas Corpus Petition.

2.The detenu came to adverse notice in the following cases:

SI.No	Police Station and Crime No.	Section of Law	Date
1.	P-1 Pulianthope Police Station Cr.No.2038/2016	147, 148, 323, 324, 307 IPC	On 17.12.2016 at about 20.00 hours
2.	P-1 Pulianthope Police Station Cr.NO.1448/2017	341, 294 (b), 323, 392, 397, 506 (ii) r/w 34 IPC	On 30.06.2017 at about 08.30 hours
3.	P-1 Pulianthope Police Station Cr.NO.325/2018	341, 294 (b), 323, 506(ii) IPC & Sec.4 of TNPHW Act 2002	On 27.05.2018 at about 21.00 hours
4.	P-1 Pulianthope Police Station Cr.NO.446/2018	341, 294 (b), 323, 392, 397, 336, 506(ii) IPC r/w 34 IPC	On 16.08.2018 at about 08.00 hours
5.	P-1 Pulianthope Police Station Cr.NO.453/2018	341, 294 (b), 392, 397, 336, 506 (ii) IPC r/w 34 IPC	On 20.08.2018 at about 08.00 hours

3. It is further averred that on 06.09.2018 at about 08.00 hours, the defacto complainant viz., Sathish was supplying water cans to the residences and shops. At that juncture, four rowdy elements had wrongfully restrained the defacto complainant and scolded him in filthy language and when their acts were questioned by him, three of them, asked the detenu to take the weapon and accordingly, the detenu drew the knife from his hip and kept the same over the stomach of the defacto complainant and in the process, three others had stolen a sum of Rs.1,500/- from the defacto complainant.

4. In this regard, the defacto complainant has given a complaint to the Inspector of Police, Pulianthope, who registered a case in Crime.No.480 of 2018 under Sections 341, 294 (b), 323, 392, 397, 336, 506 (ii) of IPC and took up the same for investigation. During the course of investigation, the Station House Officer of Pulianthope has arrested the detenu on 06.09.2018 at about 13.00 hours and examined him and on enquiry, the detenu admitted that he was involved in adverse cases in Cr.Nos.325/2018, 446/2018 and 453/2018 and thereafter, the weapon used by him - knife was also seized under a cover of Mahazar and thereafter, the intimation as to his arrest was also

given to his mother. The detenu was produced before the Court of V Metropolitan Magistrate, Allikulam, Egmore, Chennai-3 and was remanded to judicial custody till 20.09.2018 and it was extended till 04.10.2018 and the investigation process is not yet over.

5. The Detention 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 five cases and though he has been in adverse notice in five cases, his mother is taking attempt to file bail application and formed an opinion that if he comes out on bail, it will be prejudicial to the maintenance of the public order and further the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities and accordingly clamped the impugned order of detention.

6. The learned counsel appearing for the petitioner would submit that the representation was submitted through the counsel on 27.10.2018 and pointed out the chart and would submit that Deputy Secretary of Home, Prohibition and Excise (XIII) Department and the Minister for (Electricity and Prohibition and Excise) had signed the same on 30.11.2018 and leaving / deducting the holidays, there is still a delay of 12 days in disposing of the said representation and on account of the delay in consideration and disposing of the representation, the right guaranteed under Article 22 of the Constitution of India has been affected and prays for quashment of the impugned order of detention.

7. Per contra, Mr.C.Iyapparaj, learned Additional Public Prosecutor appearing for the respondent would submit that there were very many intermittent public holidays and therefore, it cannot be said that there was delay in consideration and disposing of the petitioner's representation and would further add that the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and prays for dismissal of this petition.

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

9. A perusal of the chart would indicate that the Deputy Secretary of Home, Prohibition and Excise (XIII) Department had dealt with the said representation on 08.11.2018 and Minister for (Electricity and Prohibition and Excise) has dealt with the said file on 30.11.2018 and in between, there was 6 public holidays and deducting the same, still there is a delay of about 15 days in disposing of the said representation and therefore, the said delay, in the considered opinion of this Court, is

fatal to the impugned order of detention, as it vitiates the same.

10. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 28.09.2018 in No.900/BCDFGISSSV/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/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sk

To

- 1.The Secretary to the Government
Home Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Chennai.
- 3.The Superintendent of Prisons,
Central Prison, Puzhal.
- 4.The Public Prosecutor
High Court, Madras.
- 5.The Joint Secretary to Government,
Public (Law & Order), Fort St.George, Chennai 9.

सत्यमेव जयते

HCP.No.2394 of 2018

CSL/01.04.2019

WEB COPY