

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2445 of 2018

Mahalakshmi

.. Petitioner

Versus

- 1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
 - 2.The District Magistrate and District collector,
Office of the District Magistrate and District Collector,
Tiruppur District,
Tiruppur.
 - 3.The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore District.
- .. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records, connected with the detention order of the 2nd respondent in Cr.M.P.No.08/Drug Offender/2018 dated 08.10.2018 and quash the same and direct the respondents to produce the detenu by name Nalluchamy, son of Pitchai Thevar, aged about 40 years detained in Coimbatore Central Prison before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

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

ORDER

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

The petitioner is the wife of the detenu and challenging the impugned order of detention dated 08.10.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as "Drug Offender" and detained under the provisions of Tamil Nadu Act, 14/1982, came forward to file this Habeas Corpus Petition.

2. A perusal of the grounds of detention dated 08.10.2018 would disclose that the detenu came to adverse notice in the following cases:

S.No	Date	Sections implicated
01.	22.04.2016	Section 8(c), 20(b) (ii) (B) of Narcotic Drugs and Pshychotropic Substances Act, 1985.
02.	27.1.2018	Section 8(c), 20(b) (ii) (B) of Narcotic Drugs and Pshychotropic Substances Act, 1985.

It is further alleged in the grounds of detention that on 23.08.2018 at about 15 hours, when the Inspector of Police, Madathukulam Circle was on duty, an informant appeared before him and informed that male and female persons had brought Ganga / intoxication substances for sale at Madathukulam to Kaniyur Road and after obtaining necessary permission from the Deputy Superintendent of Police, Udumalaipettai, the said officials mounted surveillance and they say male and female were carrying a bag and both of them were apprehended and the male/detenu was enquired and they also informed that they were in possession of Narcotic Drugs and necessary warnings were offered and detenu opted for search by the Inspector police and the Inspector of Police prepared an option letter and obtained his signature. The detenu voluntarily produced the bag and on inspection, it was found that there was dry crushed Ganja.

3. The Inspector of Police arrested the detenu as well as his wife viz., Mahalakshmi on 23.08.2018 at about 15.00 hours and the detenu came forward to give confession statement and it was recorded in the police station. Both of them were arrested along with contraband, which resulted in registration of a case in Crime No.136/2018 under Section 8(c), 20(b) (ii) (B) of Narcotic Drugs and Psychotropic Substances Act, 1985 and both of them were produced before the Court of Judicial Magistrate No.2, Udumalpet and they were remanded to judicial custody till 07.09.2018 and the remand period has been extended till

17.10.2018 and the samples collected was also subjected to Chemical Analysis and it was identified as Ganja and it contains chemical substance of 'Cannabinoid'. The Detaining Authority, on perusal and consideration of the materials, has arrived at the subjective satisfaction that the detenu is a Drug Offender and repeatedly involved in commission of offences under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 and clamped the detention order. Challenging the legality of the same, the wife of the detenu came forward to file this Habeas Corpus Petition.

4. The learned counsel appearing for the petitioner would submit that the petitioner had submitted two representations on behalf of the detenu dated 19.10.2018 respectively to the Principal Secretary to Government, Home, Prohibition and Excise Department, as well as to the Chairman, Advisory Board and there was some delay in giving disposal to the representation and therefore, it violates Article 21 of the Constitution of India and would contend that on account of the same, the impugned order of detention is vitiated and therefore, prays for quashment of the order of detention.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State has produced a booklet and would indicate that though the 1st representation was dated 19.10.2018, it was despatched only on 25.10.2018 and it was received on 30.10.2018 and therefore, the remarks were received only on 08.11.2018 and similarly in respect of the 2nd representation dated 19.10.2018, it was received on 19.11.2018 and the remarks were received on 06.12.2018. That apart, the Deputy Secretary has dealt with the same (1st representation) only on 09.11.2018 and the Minister for Prohibition and Excise has dealt with the same only on 30.11.2018 and after deducting the holidays on 10.11.2018, 11.11.2018, 17.11.2018, 18.11.2018, 24.11.2018, 25.11.2018, there is a considerable delay and similarly in respect of the 2nd representation, it was received on 19.11.2018 and remarks were received on 06.12.2018 and after deducting the holidays, there was 6 days delay in considering the said representation and the said delay in receiving the remarks and the consideration of the same would vitiate the order of detention passed by the 2nd respondent / Detaining Authority and hence on the sole ground, it warrants interference and the impugned order of detention is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in Cr.M.P.No.08/DRUG OFFENDER/2018 dated 08.10.2018 is set aside

and the detenu viz., Mr. Nalluchamy, Son of Pitchai Thevar, confined at Central Prison, Coimbatore is directed to be released forthwith unless his custody/detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Magistrate and District collector,
Office of the District Magistrate and District Collector,
Tiruppur District, Tiruppur.
3. The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore District.
4. The Public Prosecutor,
Madras High Court.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai 9.

सत्यमेव जयते

HCP.No.2445 of 2018

CSL/01.04.2019

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