

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

CORAM:

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

H.C.P.No.2547 of 2018

Parimala

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary to Government
Prohibition and Excise Department (Home)
Secretariat, Chennai - 600 009.

2.The Commissioner of Police
Greater Chennai City
Vepery, Chennai - 600 077.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus calling upon the production of the records relating to the detention order dated 05.10.2018 made in detention order Memo No.BCDFGISSSV/910/2018 passed by the second respondent herein and quash the same and direct the respondents to produce the body or person of the petitioner's son Murugavel S/o.Venkatesan, aged about 36 years branded as Goondas and now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forth.

For Petitioner .. Mr.S.Nagarathinam

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

ORDER

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

The mother of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 05.10.2018 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 08.10.2018 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	S-10 Pallikaranai Police Station Cr.No.1845/2016	379 IPC
2	S-10 Pallikaranai Police Station Cr.No.2408/2016	379 IPC
3	S-8 Adambakkam Police Station Cr.No.1355/2016	454, 380 IPC
4	S-10 Pallikaranai Police Station Cr.No.3079/2016	379 IPC
5	S-8 Adambakkam Police Station Cr.No.1888/2016	457, 380 IPC
6	S-10 Pallikaranai Police Station Cr.No.3454/2016	454, 380 IPC
7	S-8 Adambakkam Police Station Cr.No.2194/2016	457, 380 IPC
8	S-10 Pallikaranai Police Station Cr.No.4022/2016	457, 380 IPC
9	S-8 Adambakkam Police Station Cr.No.122/2018	379 IPC

3. It is alleged in the Grounds of the detention that the defacto complainant named Sumathy is serving as a sanitary worker in Kottivakkam Corporation Office and she is residing with her family at Kannagi Nagar, Chennai. On 07.09.2018, at about 07.00 hours, while she was walking in front of her house, Murugavel, the detenu and other accused named Sahabudeen waylaid the defacto complainant and demanded money from the complainant to enable them to buy liquor and when she replied

no, both the accused abused her in filthy language and in no time, the detenu, Murugavel took a knife and stabbed on the complainant's neck and at that time, the co-accused Sahabudeen snatched the complainant's money purse and took away a cash of Rs.300/-. The defacto complainant raised an alarm out of fear and the public gathered there and in order to escape from the scene of crime, both the accused took the stones and pelted at the public, and apprehending danger to their lives, the public and the defacto complainant ran away in all directions, and taking advantage of it, both the accused fled away from the scene of crime. Based on the complaint given by the defacto complainant, the Inspector of Police, J-11, Kannagi Nagar Police Station, has registered a case in Cr.No.734/2018 for the commission of the offences u/s.341, 294(b), 336, 392 r/w 397 and 506[iii] IPC [ground case] and took up the case for investigation. Thereafter, the detenu was arrested by the police on 14.08.2018 at about 14.15 hours and on enquiry, he has admitted his involvement in the ground case and his confession statement was recorded and based on his admissible portion of the statement, incriminating article was seized. The detenu was produced before the Court of Judicial Magistrate, Alandur, Chennai on the same day and the detenu was ordered to be remanded to judicial custody till 18.09.2018 as remand prisoner in Central Prison, Puzhal and his remand period was extended till 12.10.2018.

4. The Detaining Authority on the basis of the material placed has arrived at the subjective satisfaction that the act 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 vide impugned order and challenging the legality of the same, the present habeas corpus petition is filed.

5. The learned counsel for the petitioner would submit that a representation dated 30.10.2018 submitted by the petitioner herein/mother of the detenu to revoke the order of detention and there was considerable delay in considering the said representation by the Deputy Secretary of Home, Prohibition and Excise [XIII] Department, and in the absence of any tenable explanation, such delay is fatal and prays for quashment of impugned order of detention.

6. Per contra, Mr.C.Iyyappa Raj, 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.

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

8. A perusal of the working sheet as to the disposal of the representation would disclose that the representation dated 30.10.2018 submitted by the mother of the detenu/petitioner herein, has been dealt with by various authorities and the Deputy Secretary has dealt with the same on 08.11.2018 and however, the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 30.11.2018 and in between 08.11.2018 and 30.11.2018, there was 6 Government Holidays and excluding the same, still there was a delay of 16 days in considering the said representation.

9. In the considered opinion of the Court, no proper and plausible explanation has been offered as to the said delay in considering the said representation and in the absence of the same, 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, is liable to be set aside.

10. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 05.10.2018 is hereby set aside. The detenu, viz., Murugavel, son of Mr.Venkatesan, aged 36 years, who is now confined in the Central Prison, Puzhal, Chennai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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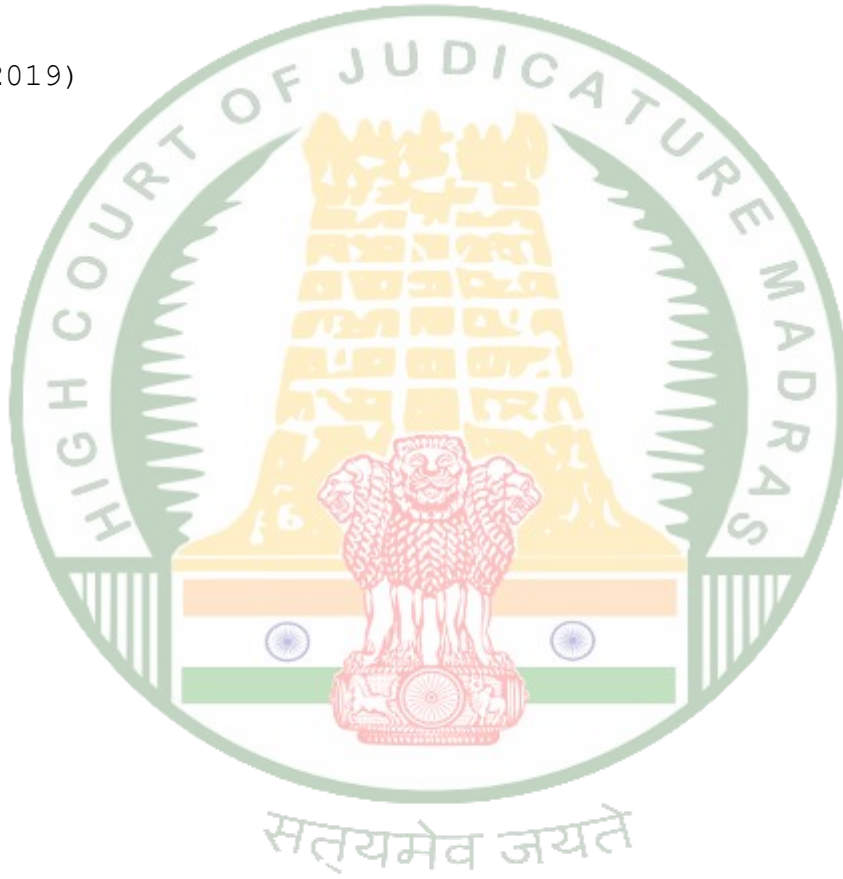
- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai City,
Vepery, Chennai 600 007.
- 3.The Superintendent
Central Prison, Puzhal
Chennai 600 066.

4. The Joint Secretary to Government
Public (Law and order)
Fort.St.George
Chennai 9.

5.The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.2547 of 2018

SP (29/03/2019)



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