

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2550 of 2018

Saravanan

.. Petitioner

Versus

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

2.District Collector & District Magistrate
Kancheepuram District
Kancheepuram.

.. 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 on 19.09.2018 made in detention order Memo No.BCDFGISSSV/71/2018 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of the petitioner's friend Kanakaraj s/o, Pannerselvam aged about 26 years branded as Goondas and now confined in Central Prison, Vellore, before this Court and set him at liberty forth.

For Petitioner : Mr.Mohammed Aasif

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

ORDER

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

The petitioner is the friend of the detenu and challenging the impugned order of detention dated 19.09.2019 passed by the 2nd respondent by invoking Section 2 (f) in branding the detenu as ''Goonda'', the present Habeas Corpus Petition is filed.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the following case:

S.I.No	Crime No.	Section of law	Date of occurrence
1.	Otteri Police Station Cr.No.285/2017	341, 294 (b), 394, 506 (ii) IPC	27.05.2017

It is further averred in the grounds of detention that the defacto complainant who is a resident of Nedugundram, Chengalpattu Taluk, appeared before the Sub Inspector of Police, Thazhambur Police Station on 25.07.2018, stating among other things that his brother is an Auto Driver and while he along with his friend proceeding in a Motor cycle on Kelambakkam route, the defacto complainant also followed them in his auto and at that time, the detenu along with five other persons followed them in two motorcycles and waylaid his brother opposite to Blue Diamond Leather Company, Rathinamangalam and they tried to assault him with knives. The younger brother ran towards the side bend of Rathinamangalam lake and he was chased by them and assaulted brutally and in the result, he died on the spot. The defacto complainant lodged a complaint to the Sub Inspector of Police, Thazhambur Police Station, on the basis of which, a case in Cr.No.286 of 2018 under Sections 147, 148, 341 & 302 IPC, was registered. The detenu in connection with the said case, had surrendered before the Judicial Magistrate-I, Thiruvallur and he was directed to be produced before the Judicial Magistrate, Chengalpattu on 03.08.2018 and accordingly, he produced before the Judicial Magistrate Court-I, Chengalpattu and remanded period was further extended upto 16.08.2018 and police custody of the detenu was also took.

3. The Detaining 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 one case and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas

Corpus Petition is filed.

4. The learned counsel appearing on behalf of the detenu would submit that for revoking the order of detention, a representation dated 24.10.2018 was submitted and drawn attention of this Court to the worksheet and would submit that the said representation was received on 01.11.2018 and remarks were called on 01.11.2018 and received on 12.11.2018 and there was a delay of 10 days and excluding 5 days holidays, still there were five days delay and further drawn the attention of this Court to Sl.Nos.12 and 13 and would submit that Joint Secretary, Home, Prohibition & Excise (XI) Department, dealt with the said representation on 12.11.2018 and the Honble Minister for Electricity, Prohibition & Excise Department dealt with the same on 30.11.2018 and there were again 17 days delay and excluding 5 days holidays, still there were delay of 12 days and totally 17 days delay in considering the said representation and no proper and tenable explanation has been offered as to the reasons for the said delay and the said delay would also vitiate the order of detention and the valuable right guaranteed under Article 22 of the Constitution of India has also been violated and hence, prays for quashment of the impugned order of detention.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that taking into consideration of those holidays, it cannot be said that the delay is fatal to the impugned detention order and he would further add that the Detaining Authority with due and proper application of mind, has rightly reached the conclusion and clamped the impugned order of detention and prays for dismissal of this petition.

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

7. As rightly pointed out by the learned counsel appearing for the petitioner that there was a delay of 5 days in calling for remarks and once again, there was a delay of 12 days in dealing with the said representation by Joint Secretary, Home, Prohibition and Excise (XI) Department and the Honble Minister of Prohibition and Excise Department and even excluding holidays, still there was a considerable delay and no proper and tenable explanation has been offered as to the said delay. In the considered opinion of this Court, the delay is also fatal to the impugned order of detention for the reason that it also caused prejudice to the Constitutional Right guaranteed to the detenu under Article 22 of the Constitution of India and on the same ground, the impugned order of detention warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 19.09.2018 in No.BCDFGISSSV/71/2018 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 VI)

//True Copy//

Sub Assistant Registrar

sk

To

- 1.The Secretary to Government
Prohibition and Excise Department, (Home)
Secretariat, Chennai-600 009.
- 2.District Collector & District Magistrate
Kancheepuram District, Kancheepuram.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Superintendent,
Central Prison,
Vellore.
- 5.The Joint Secretary to Government,
Public Law & Order,
Fort Saint George, Chennai.

HCP.No.2550 of 2018

mg(co)
nr 03/05/2019

WEB COPY