

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.2538 of 2018

Sarojini

.. 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 08.10.2018 made in detention order Memo No.BCDFGISSSV/923/2018 passed by the second respondent herein and quash the same and direct the respondents to produce the body or person of the petitioner's brother Sasikumar @ Pura, S/o.Mr.Madurai, aged about 24 years branded as Goondas and now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith

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 petitioner is the sister of the detenu and challenging the legality of the impugned order of detention dated 08.10.2018 passed by the second respondent, in and by which, her brother, 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, 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	F-2 Egmore Police Station (Cr.No.1389/2017)	379 IPC
2	F-2 Egmore Police Station (Cr.No.1774/2017)	379 IPC
3	F-2 Egmore Police Station (Cr.No.1775/2017)	379 IPC
4	F-2 Egmore Police Station (Cr.No.1776/2017)	379 IPC
5	F-2 Egmore Police Station (Cr.No.1778/2017)	341, 427, 336, 397 & 506(ii) IPC
6	J-11 Kannaki Nagar P.S. (Cr.No.635/2018)	379 IPC

3. It is further alleged in the Grounds that the defacto complainant named Samy, is the resident of Door No.128, Egmore High Road, Egmore, Chennai-8 and he was working in a tiffin shop being run at the above address. On 14.08.2018 at about 13.30 hours, when the defacto-complainant was looking after his business, a person (detenu) visited the shop and demanded for two parcels of meals and after supply was effected, the defacto complainant demanded money and at that juncture, the said person refused to pay and also scolded the defacto complainant in filthy language and took out a knife and threatened him at the knife point and snatched cash of Rs.1100/- and a cell phone from the defacto complainant's cash box. The defacto complainant raised an alarm and the nearby public and some residents of that locality gathered there and they were also threatened with dire consequences and the accused fled away from the scene of crime. The Inspector of Police, F-2 Egmore Police Station, based on the complaint given by the defacto complainant, has registered a case in Cr.No.474/2018 for the commission of the offences u/s.341, 336, 427, 397 and 506[ii] IPC [ground case] and took up the case for investigation.

4. The said person was identified as detenu and he 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 in the sixth adverse case and based on his confession statement, incriminating articles were seized and the detenu was produced before the Court of XIV Metropolitan Magistrate, Egmore at Allikulam, Chennai-3 on the same day and was ordered to be remanded to judicial custody till 28.08.2018 as remand prisoner in Central Prison, Puzhal and his remand period was extended till 09.10.2018.

5. The Detaining Authority on the basis of the material 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 vide impugned order and challenging the legality of the same, the present habeas corpus petition is filed.

6. The learned counsel for the petitioner would submit that a representation dated 30.10.2018 submitted by the petitioner herein/sister 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.

7. 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.

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

9. 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 sister 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 03.12.2018 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.

10. 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.

11. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 08.10.2018 is hereby set aside. The detenu, viz., Sasikumar @ Pura, son of Mr.Madurai, aged 24 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.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

- 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 & Order)
Fort St.George, Chennai-9.
- 5.The Public Prosecutor,
Madras High Court, Madras.

CSL/12.04.2019

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