

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2019

CORAM:

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

H.C.P.No.2556/2018

Sivakami

.. Petitioner

vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.

2. The Commissioner of Police
Office of the Commissioner of Police
Greater Chennai, Vepery,
Chennai 600 007.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the detention order passed by the 2nd respondent in memo No.BCDFGISSSV/947/2018 dated 16.10.2018 against the petitioner's son, Rasaiya, detenu herein now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the Rasaiya, son of Paramasivam, before this Court and set him at liberty.

For Petitioner .. Mr.A.Nirmal Kumar

For Respondents .. Mr.C.Iyyappa Raj, APP

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 16.10.2018 passed by the 2nd respondent, in and by which, her son, the detenu herein has been branded as a 'Goonda' under the provisions of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present petition.

2 As per the Grounds of Detention dated 16.10.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Thiruporur PS Cr.No.561/2017	147, 148, 294[b], 302 IPC @ 147, 148, 114, 302, 34, 149 IPC
2	P6 Kodungaiyur PS Cr.No.1204/2018	341, 294[b], 307 IPC

3 It is further alleged in the Grounds that on 06.10.2018 at about 07.00 hours, the detenu waylaid the defacto complainant Ravisankar and abused him using unparliamentary words and also snatched cash of Rs.1300/- by brandishing a knife and the defacto complainant raised an alarm and when public gathered, they were also threatened with dire consequences and the detenu fled away from the scene of crime. P-6 Kodungaiyur Police Station, on the basis of the complaint given by the complainant, has registered a case in Cr.No.1211/2018 for the commission of the offences u/s.341, 294[b], 397 and 506[ii] IPC [ground case] and took up the case for investigation. The detenu was arrested on 06.10.2018 at about 12.30 Noon and based on the admissible portion of the voluntary confession statement, incriminating article was seized and the detenu was produced before the Court of V Metropolitan Magistrate, Egmore, Chennai on the same day and was ordered to be remanded to judicial custody till 17.10.2018. The Detaining Authority on a perusal and consideration of the materials has arrived at the subjective satisfaction that the fact of involvement of the detenu in the adverse cases as well as in the ground case, would be prejudicial to the maintenance of public order and hence, 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.

4 The learned counsel for the petitioner would submit that a representation dated 01.11.2018 was submitted by the petitioner herein/mother of the detenu and the Deputy Secretary of Home, Prohibition and Excise [XIII] Department, has dealt with the same on 09.11.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 30.11.2018 and excluding 6 intervening holidays, still there was a delay of 14 days in dealing with and considering the

said representation and the said delay is fatal for the reason that the valuable rights of the detenu guaranteed under Article 22 of the Constitution of India, has been affected and therefore, prays for quashment of the impugned order of detention.

5 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.

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

7 A perusal of the working sheet as to the disposal of the representation would disclose that the representation dated 01.11.2018 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 09.11.2018 and however, the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 30.11.2018 and between 09.11.2018 and 30.11.2018, there were 6 Government Holidays and excluding the same, still there was a delay of 14 days in considering the said representation. In the considered opinion of the Court, the said delay, in the facts and circumstances, appears to be considerable and no plausible explanation has been offered as to the delay in considering the said representation and on account of the said delay, 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.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 16.10.2018 is hereby set aside. The detenu, viz., Rasaiya, son of Paramasivam, aged 22 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(CS-III)

//True Copy//

Sub Assistant Registrar

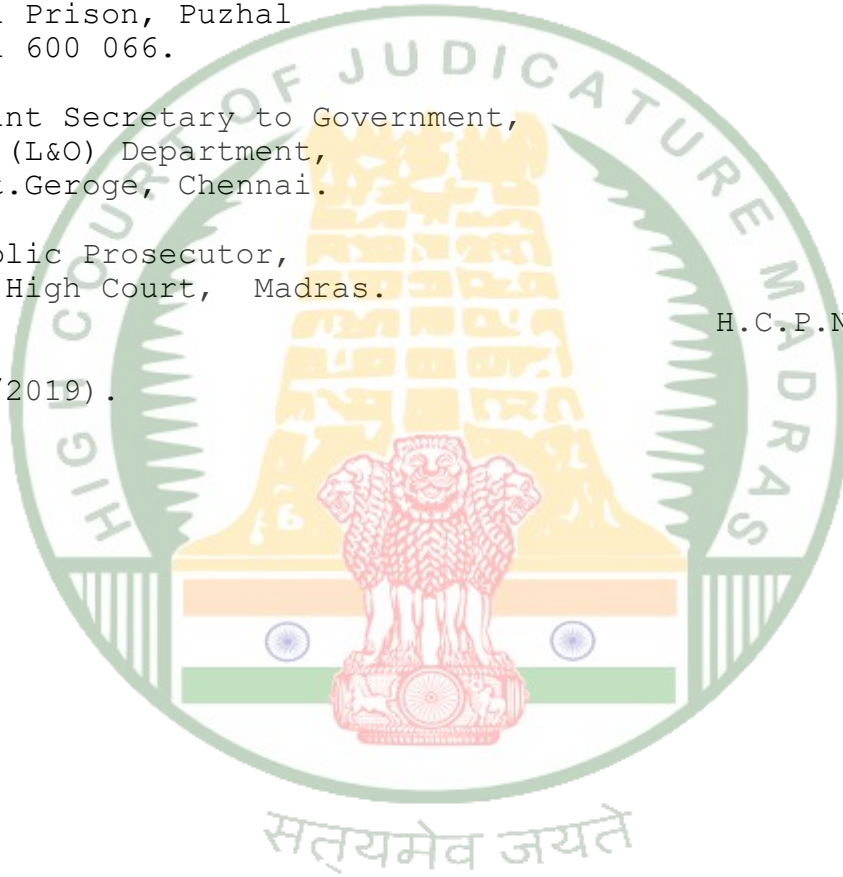
AP

To

1. The Secretary to Government,
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Greater Chennai, Vepery,
Chennai 600 007.
3. The Superintendent
Central Prison, Puzhal
Chennai 600 066.
4. The Joint Secretary to Government,
Public (L&O) Department,
Fort.St.Geroge, Chennai.
5. The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.2556/2018

RSI(CO)
SSM(26/03/2019).



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