

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.2558/2018

Mohamed Riazuddin ... Petitioner/Father of the Detenue
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, Veperiy,
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 887 of 2018 dated 25.09.2018 against the petitioner's son, Perosekhan @ Riswan @ Rose, detenu herein now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the Perosekhan @ Riswan @ Rose, son of Mohammed Riyasudeen, 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 father of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 25.09.2018 passed by the 2nd respondent, in and by which, his 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 25.09.2018 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	V4 Rajamangalam PS Cr.No.358/2018	392 IPC
2	V6 Kolathur PS Cr.No.457/2018	392 IPC
3	V4 Rajamangalam PS Cr.No.634/2018	392 IPC

3 It is further alleged in the Grounds that on 10.08.2018 at about 10.30 hours, when the defacto complainant was proceeding near Thailam Thoppu, Poompuhar Nagar, First Main Road, Kolathur, an unidentified person came in the opposite direction and wrongfully restrained the complainant and on the pretext of asking for an address, scolded him in filthy language and also slapped him on the face and snatched cash of Rs.1850/- and when the defacto complainant raised an alarm, public gathered there and they were also threatened with dire consequences and in the process, the detenu escaped. V6 Kolathur Police Station, on the basis of the complaint given by the complainant, has registered a case in Cr.No.485/2018 for the commission of the offences u/s.341, 294[b], 323, 336, 392, 397, 506[ii] IPC read with section 3 of TNPPDL Act, 1992 [ground case] and took up the case for investigation. The detenu was arrested on 11.08.2018 at about 11.00 hours 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 24.08.2018 and the remand was extended for a further period till 04.10.2018. 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/father 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 father 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 25.09.2018 is hereby set aside. The detenu, viz., Perosekhan @ Riswan @ Rose, son of Mohammed Riyasudeen, aged 30 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-IV)

//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 Public Prosecutor,
Madras High Court, Madras.

RV (CO)
GMY (25/04/2019)

H.C.P.No.2558/2018

सत्यमेव जयते

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