

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.03.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2553 of 2018

M.Ravi

.. Petitioner

Versus

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

2.The Commissioner of Police,
Greater Chennai,
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 pertaining to the order made in memo No.888/B.C.D.F.G.I.S.S.S.V/2018 dated 25.09.2018 by the second respondent and quash the same and direct the respondent to produce the detenu Logesh @ Logu, S/o.Ravi, 24 years, who is now detained in Central prison, Puzhal, Chennai-600 066, before this Court.

For Petitioner : Mr.P.K.Ilavarasan

For Respondents: Mr.C.Iyyappa Raj

Additional Public Prosecutor

सत्यमेव जयते

ORDER

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

The petitioner is the father of the detenu and challenging the impugned order of detention dated 25.09.2018 passed by the 2nd respondent by invoking Section 2 (f) of the Tamil Nadu Act 14 of 1982, 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 cases:

SL. No.	Crime No.	Section of law	Date of occurrence
1.	T-9 Pattabiram Police Station Cr.No.733/2018	294 (b), 332 IPC r/w Sec.3 (1) of TNPPDL Act	21.06.2018
2.	T-7 Tank Factory Police Station Cr.No.556/2018	454, 380 IPC	06.07.2018
3.	T-10 Thirumullaivoyal Police Station Cr.No.882/2018	341, 324, 506 (ii) IPC @ 147, 148, 341, 307 IPC	28.08.2018
4.	T-8 Muthapudupet Police Station Cr.No.462/2018	307 IPC	01.09.2018

It is further averred in the grounds of detention that one Mr.Selvaperumal, who is a resident of Nemilichery, is running a scrap iron shop at Palavedu Main Road. On 04.09.2018 at about 10.30 hours, he was proceeding near Balaji Sweet Stall, Mittanamalli Bazaar, at that time, two persons wrongfully restrained the complainant and abused him in filthy language and also threatened him to take the money kept in his pocket and when it was resisted, by brandishing knife, they snatched a cash of Rs.2,000/- and a cellphone from the complainant's shirt pocket. When the complainant raised alarm, the public rushed to the place. They also threatened the public with dire consequences and taking advantage of the panic situation, they fled away from the scene of occurrence.

3. The Inspector of Police, T-8 Muthapudupet Police Station subsequently altered the Sections to 341, 294(b), 336, 427, 392, 397, 506 (ii) IPC r/w 34 IPC and effected the arrest of the detenu as well as co-accused namely Prabu @ Aali on 04.09.2018 and both of them voluntarily came forward to give confession statements and based on the admissible portion of the confession statements, some incriminating articles were seized. The detenu and the co-accused were produced before the Court of Judicial Magistrate, Ambattur, Chennai on 04.09.2018 and both of them were remanded to judicial custody till 18.09.2018 and their remand period was extended till 01.10.2018.

4. 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 four cases 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.

5. The learned counsel appearing on behalf of the detenu would submit that just one day prior to the impugned order of detention dated 25.09.2018, the mother of the detenu has submitted a post detention representation dated 24.09.2018 to the 2nd respondent / Detaining Authority and also produced the Track Consignment Report which indicate that mother of the detenu has addressed the post detention representation to the 2nd respondent on 24.09.2018 and it was delivered on 25.09.2018 and pointed out that despite receipt and acknowledgment of the said representation, it has not been given any disposal and further pointed out that in the counter affidavit filed on behalf of the 2nd respondent, nothing has been indicated as to the consideration and disposal of the said representation and in the light of the non-disposal of the representation, the individual right guaranteed to the detenu had been infringed and hence, prays for quashment of the impugned order of detention.

6. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the post detention representation submitted on behalf of the detenu would be considered and appropriate orders would be passed very soon and prays for dismissal of this Habeas Corpus Petition.

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

8. A perusal of the typed set of documents filed on behalf of the detenu would disclose that the mother of the detenu has submitted post detention representation dated 24.09.2018, just one day prior to the impugned order of detention dated 25.09.2018 and as per the Track Consignment Report, it was served on the 2nd respondent / Detaining Authority on 25.09.2018, on the date of passing of the impugned detention order. A perusal of the counter affidavit filed on behalf of the 2nd respondent would indicate that nothing has been stated about the receipt and consideration of the said representation.

9. In the considered opinion of this Court, non-disposal of the post detention representation infringe upon the valuable right guaranteed to the detenu under Article 22 of the Constitution of India and on the sole ground, the impugned order of detention warrants interference.

10. Accordingly, this Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 25.09.2018

in No.888/BCDFGISSSV/2018 is set aside and the detenu namely Logesh @ Logu, S/o.Ravi, aged 24 years, is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

-s/d-
Assistant Registrar

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,
Chennai-600 007.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Joint Secretary to Government
Public (L&O) Fort St.George, Chennai-9.
- 5.The Superintendent,
Central Prison, Puzhal, Chennai.

सत्यमेव जयते

HCP.No.2553 of 2018

RSV(CO)
SNI(24/05/2019)

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