

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.2612 of 2018

Sivagami

.. Petitioner

Versus

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

2.The District Collector
and District Magistrate, Coimbatore.
.. 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 22.10.2018 made in detention order Memo No.Crl.M.P.NO.21/BL/2018/E1 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body or person of the petitioners Husband Doss @ Arokiyadass, S/o Pathiyanathan aged about 48 years branded as ''BOOTLEGGER'' and now confined in Central Prison, Coimbatore before this Court and set him at liberty forth.

For Petitioner : Mr. W.Camyles Gandhi

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

ORDER

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

The petitioner is the wife of the detenu and challenging the impugned order of detention dated 22.10.2018 passed by the 2nd respondent by invoking Section 2 (b) of the Tamil Nadu Act 14

of 1982, in branding the detenu as 'Bootlegger', 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.	Erode District, Gobichettipalayam Prohibition Enforcement Wing Crime No.1015/2017	Section 4 (1) (a) of Tamil Nadu Prohibition Act, 24 of Tamil Nadu Prohibition Act.	11.11.2017
2.	Coimbatore District, Periyanaickenpalayam Prohibition Enforcement Wing Crime No.727/2018	Section 4 (1-A) 4(1) (aa) of Tamil Nadu Prohibition Act and 420, 468, 471 IPC	06.08.2018

3. It is further averred in the grounds of detention that on 23.09.2018 at about 09.30 hours, the Sub-Inspector of Police, Periyanaickenpalayam Prohibition Enforcement Wing was present in the station duty and at that time, one Thiru.Manikandan, appeared in person and lodged a written complaint stating that he is habituated to drinking and used to buy brandy from one Prabhu and accordingly, he purchased one quarter brandy from him and the said person took the bottle without label, opened it and poured the same in alternate bottles and told him that the effect of the drug will be good. Accordingly, the defacto complainant came to the room and poured only half and immediately after consuming that liquor, developed dizziness, vomiting and loose motions and realizing that the brandy given to him by the said person is spurious, came forward to lodge a complaint, based on which, Crime No.846/2018 was registered under Section 4(1-A) of the Tamil Nadu Prohibition Act. During the course of investigation, the detenu was arrested on 23.09.2018 and he voluntarily came forward to give a confession statement. In pursuant to the admissible portion of the confession statement, some incriminating articles were seized. The detenu, after arrest and recovery, was produced before the Court of Judicial Magistrate, Mettupalayam and he was ordered to be remanded to judicial custody till 08.10.2018 and the remand period was subsequently extended till 24.10.2018. The chemical analysis of the samples would also disclose that the samples contain chemical substance of ATROPINE.

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 two 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 for revoking the order of detention, representations dated 08.11.2018 and 31.10.2018 were submitted and while dealing with the 1st representation, the Deputy Secretary, Home, Prohibition and Excise Department had dealt with it on 15.11.2018 and the Hon'ble Minister, Electricity and Prohibition and Excise had dealt with the same on 30.11.2018 and there were 14 days delay and excluding 5 days holidays still there were a delay of 9 days in dealing with the said representation. In the absence of any proper or tenable explanation, the said delay is fatal to the impugned order of detention and 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 delay is very minimal and he would further add that the Detaining Authority with due and proper application of mind, has rightly reached the subjective satisfaction and clamped the impugned order of detention and prays for dismissal of this petition.

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

8. As rightly pointed out by the learned counsel appearing for the petitioner that the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the representations dated 08.11.2018 on 15.11.2018 and the Hon'ble Minister, Electricity and Prohibition and Excise had dealt with the same on 30.11.2018 and excluding 5 days holidays, still, there were delay of 9 days in dealing with and considering the said representation. In the considered opinion of this Court, in the absence of any proper, tenable or plausible explanation, the said delay is fatal to the impugned order of detention, for the reason that it has also caused prejudice to the valuable 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.

9. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 22.10.2018 in Memo No.Crl.M.P.NO.21/BL/2018/E1 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

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To

- 1.The Secretary to Government
Prohibition and Excise Department, (Home),
Secretariat, Chennai-600 009.
- 2.The District Collector
and District Magistrate, Coimbatore.
3. The Superintendent
Central Prison,
Coimbatore.
4. The Joint Secretary to Government
Public (Law & Order)
Fort Saint George,
Chennai-9
- 5.The Public Prosecutor
High Court, Madras.

+1cc to Mr.W.Camyles Gandhi, Advocate SR.No.20305

HCP.No.2612 of 2018

SSI (CO)
GMY (02/05/2019)

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