

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 18.03.2019

CORAM

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

HCP.No.2681 of 2018

K.Kalpana

.. Petitioner

Versus

1.The State of Tamil Nadu
Rep.by the Secretary
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.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 relating to the detention order Memo No.933/BCDFGISSSV/2018 dated 10.10.2018 passed by the 2nd respondent under Tamil nadu Act 14 of 1982 and quash the same and direct the respondent to produce the detenu Kumar, son of Mahalingam male aged 34 years now confined in Central Prison, Puzhal before this Court and set the detenu Kumar, son of Mahalingam male aged 34 years at liberty.

For Petitioner : Mr.K.Kathiresan

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 10.10.2018 passed by the 2nd respondent by invoking Section 2 (f) in and by which, the detenu has been branded 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:

S.I.No	Crime No.	Section of law	Date of occurrence
1.	R-6 Kumaran Nagar P.S.Cr.No.694/2018	392 IPC	28.06.2018
2.	R-6 Kumaran Nagar P.S.Cr.No.1025/2018	392 IPC	31.08.2018

It is further averred in the grounds of detention that the defacto complainant namely Thiru.Ramesh, who is a resident of Jafferkhanpet, Chennai-83 stating that he is running a mobile tender coconut shop and on 03.09.2018, at about 07.30 hours, two persons came and took tender coconuts and left without paying and when he insisted, he was wrongfully restrained and the accused namely Anbu @ Sarathkumar and Kumar threatened the defacto complainant by brandishing knife and also asking to part with the money and when he was refused, a sum of Rs.1,500/- kept in the shirt pocket of the defacto complainant was forcefully taken up. The Inspector of Police, Kumaran Nagar Police Station has registered a case in Cr.No.1044 of 2018 under Sections 341, 294 (b), 336, 394, 397 and 506 (ii) IPC. The detenu and the co-accused were arrested on 03.09.2018 at about 12.00 noon and they voluntarily came forward to give a confession statement based on which, some incriminating articles were seized. The detenu and the co-accused were produced before the Court of XXIII Metropolitan Magistrate, Saidapet, Chennai and they were ordered to be remanded to judicial custody till 17.09.2018 and it was further extended till 15.10.2018.

3. The Detaining Authority, on the basis of materials, has 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.

4. The learned counsel appearing for the petitioner would submit that two post detention representations dated 31.10.2018 and 22.11.2018 have been submitted and insofar as the second representation is concerned, the Deputy Secretary, Home, Prohibition and Excise (X) Department had dealt with the same on 04.12.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise had dealt with the same on 20.12.2018 and excluding 4 days holidays, still there was a delay of 11 days in dealing with the said representation and in the absence of any plausible or tenable explanation, the said delay is fatal to the impugned Detention Order.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the representations submitted by the detenu were considered and disposed of without much loss of time and hence, prays for dismissal of this Habeas Corpus Petition.

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

7. As rightly pointed out by the learned counsel appearing for the petitioner, the post detention representations submitted on behalf of the detenu was dated 31.10.2018 and 22.11.2018 and as per the work sheet, the Deputy Secretary, Home, Prohibition and Excise (X) Department had dealt with the same on 04.12.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise had dealt with the same on 20.12.2018 and excluding 4 days holidays, still there was a delay of 11 days in dealing with the said representations.

8. In the considered opinion of this Court, in the absence of any proper and tenable explanation, the delay is fatal to the impugned order of detention, for the reason that it also caused prejudice to the Constitutional 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 in Memo No.933/BCDFGISSSV/2018 dated 10.10.2018 is set aside and the detenu viz., Kumar, son of Mahalingam, male aged 34 years now confined in Central prison, Puzhal 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
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

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3.The Superintendent,
Central Prison, Puzhal,
Chennai.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai -9.

5.The Public Prosecutor,
High Court, Madras.

HCP.No.2681 of 2018

GJ-II(CO)

RRS (17/06/2019)



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