

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM:

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

H.C.P.No.2668 of 2018

Vilasini

.. Petitioner

Vs.

1.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.

.. 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.BCDFGISSSV 996/2018, dated 29.10.2018 passed by the second respondent under the Tamil Nadu Act 14 of 1982, and quash the same and direct the respondent to produce the detenu Baburaj @ Vanajackson, Son of Achu, male, aged 53 years, now confined in Central Prison, Puzhal, before this Court and set the detenu Baburaj @ Vanajackson, Son of Achu, male, 53 years at liberty.

For Petitioner .. Mr.S.Mareeswaran

For Respondents.. Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The petitioner, who is the wife of the detenu, namely Baburaj @ Vanajackson, aged 53 years, challenging the legality of the impugned order of detention dated 29.10.2018 passed by the second respondent, in and by which, her husband/detenu has been branded as ''Sexual Offender'' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber Law Offenders, Drug Offenders,

Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present Habeas Corpus Petition.

2. A perusal of the grounds of detention would disclose among other things that the complainant is an owner of a commercial vehicle, and he eke out his livelihood by driving the vehicle, he owned. He has two girl children, elder daughter is aged 11 years, who is not mentally sound and her younger daughter is 8 years old, who is studying in III standard. On 01.10.2018, when the defacto complainant and his wife was returning home along with her elder daughter, the younger daughter ran towards them screamingly and stated that the detenu had misbehaved with her and she further added that the detenu is in habit of misbehaving and having physical contact with both the minor children of the defacto complainant, for quiet a long time, and she being threatened by the detenu, resisted to inform the same to her parents. On lodging a complaint by the defacto complainant, the Inspector of Police, W33 Madhavaram All Women Police Station, has registered a case in Crime No.07/2018, against the detenu, for the commission of offences under Sections 363, 366, 354-B, 354-D, 376(2)(i)(j)(l)(n), 376 AB IPC, 6 r/w 5(j)(ii)(i)(k)(l)(m), 8 r/w 7, 10 r/w 9 (j)(l)(k)(l)(m) of Protection of Children from Sexual Offences Act 2012 and took up the case for investigation.

3. The detenu was arrested by the Inspector of Police at 18.00 hours on 02.10.2018 and he voluntarily came forward to give confession statement and based on which, certain facts were discovered. The detenu was produced before the Mahila Court, Thiruvallur District on the same day, and he was ordered to be remanded to judicial custody till 16.10.2018 as remand prisoner in Central Prison, Puzhal and his remand period was extended till 30.10.2018.

4. The Detaining Authority on consideration of the materials placed, derived the subjective satisfaction that the detenu has committed the crime in an non-aggravated manner, and he has destroyed the basic equilibrium of social atmosphere, and also physically abused the child, who is mentally imbalanced and aged only 11 years, and found that the victim is in the habit of committing heinous sexual brutal assault to the children, clamped the order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

5. The learned counsel for the petitioner has drawn the attention of this Court to the working sheet and would submit that two representations dated 22.11.2018 and 16.11.2018 have been submitted to the respondents to revoke the order of detention and while dealing with the first representation, there

was a delay of 15 days and after deducting 4 public holidays, still there was a delay of 11 days, and insofar as the second representation is concerned, there was a delay of 9 days and leaving 2 Government Holidays, still there was a delay of 7 days and in the absence of any proper explanation, such delay is fatal and prays for quashment of impugned order of detention.

6. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that considering the nature and gravity of the offences committed by the detenu to the hapless minor children, especially who are below 12 years and who is mentally imbalanced, the Detaining Authority has rightly derived the subjective satisfaction and 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.

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

8. A perusal of the working sheet as to the disposal of the representations submitted to revoke the order of detention would disclose that, in respect of the first representation dated 22.11.2019, it has been dealt with various authorities and the Deputy Secretary of Home, Prohibition and Excise (X) Department has dealt with the same on 14.12.2018 and however, the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with it only on 20.12.2018. Hence, there was a delay of 15 days, and in between 04.12.2018 and 20.12.2018, there was 4 Government Holidays and excluding the same, still there was a delay of 11 days in considering the first representation. Similarly, in considering the second representation submitted by the detenu, the said representation has been dealt by the Deputy Secretary only on 11.12.2018 and by the Hon'ble Minister for Electricity, Prohibition and Excise, only on 20.12.2018 and in between 11.12.2018 and 20.12.2018, there was 2 Government Holidays and excluding the same, there was a delay of 7 days in considering his second representation.

9. In the considered opinion of this Court, no proper and plausible explanation has been offered as to the said delay in considering the said representations, and in the absence of the same, it should be construed as fatal and it shall be pointed out at this juncture that speedy disposal is the fundamental right guaranteed to the detenu under Article 22 of the Constitution of India, has been violated and in the light of the above facts and circumstances, the impugned order of detention is vitiated and the same is liable to be quashed.

10. In the result, the Habeas Corpus petition is allowed

and the detention passed by the second respondent in Detention Order No.BCDFGISSSV 996/2018, dated 29.10.2018, is hereby set aside. The detenu, viz., Baburaj @ Vanajackson, Son of Achu, aged 53 years, now confined in Central Prison, Puzhal, 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 (Insp Cell)

//True Copy//

Sub Assistant Registrar

Ds
To

- 1.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.
- 3.The Public Prosecutor
High Court, Madras.
4. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9
5. The Superintendent,
Central Prison,
Puzhal, Chennai.

H.C.P.No.2668 of 2018

NA(CO)
GN(30/05/2019)

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