

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

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

H.C.P.Nos.2686 & 2690 of 2018

Nadiya ... Petitioner in H.C.P.No.2686/2018
Sasikala ... Petitioner in H.C.P.No.2690/2018

-Vs-

1. State of Tamil Nadu
Rep. by the Secretary
Prohibition and Excise Department,
Fort St. George, Chennai - 9.
2. The Commissioner of Police
Greater Chennai,
Veppery, Chennai ... Respondents in both petitions

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order Memo Nos.BCDFGISSSV 1018/2018 & BCDFGISSSV 1017/2018, dated 02.11.2018 passed by the 2nd respondent under Tamil Nadu Act 14 of 1982 and quash the same and direct the respondents to produce the detainees namely Dharaniswaran @ Dharani son of Manoharan male aged about 39 years and Siva, son of Kalimuthu, male aged 36 years, now confined in Central Prison, Puzhal before this Court and set them at liberty.

For Petitioners in both HCP.s :Mr.S.Vellidoss MS

For Respondents in both HCP.s :Mr.C.Iyyappa Raj
Additional Public Prosecutor

COMMON ORDER

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

Both the Habeas Corpus Petitions are taken up together and disposed of by this common order, as the detainees said to have involved in one and the same incident / ground case. In both petitions, wife of the detainees are the petitioners and

challenging the legality of the impugned orders of detention dated 02.11.2018 passed by the 2nd respondent by invoking Section 2(f) of the Tamil Nadu Act 14 of 1982, by branding the detainees as 'Goondas', came forward to file these Habeas Corpus Petitions.

2. A perusal of the grounds of detention would disclose among other things that the detainees came to adverse notice in the following case:

SI.No	Police Station and Crime No.	Section of Law	Date
1.	S-10, Pallikaranai P.S.Cr.No.1323/2018	147,148, 324, 307, 506(ii) IPC	30.09.2018

It is further averred that the defacto complainant, namely Mr.Samraj, a resident of Pallikaranai, Chennai-100 was running a Tata AC Vehicle and at about 11 hours on 02.10.2018, he was proceeding by walking at Mambakkam main road and near Babu Nagar Junction, the detainees along with Bharath, Rishi Kumar, Suresh of Perumbakkam as well as Siva of Pudhu Nagar came on the opposite direction and assaulted him and also asked him to handover the money and when he replied that he did not have any money, the detenu in H.C.P.No.2686 of 2018 pulled him by holding his shirt and told him about his antecedents and also threatened him by brandishing knife and stabbed and despite the defacto complainant was refused to part money, one Bharath took the knife and kept it over the neck of the defacto complainant and the detenu in H.C.P.No.2690 of 2018 assaulted him and one Arun robbed a sum of Rs.5,000/-. When the defacto complainant raised an alarm, the public had gathered and all the accused threatened the public with dire consequences and taking advantage of the panic situation, they fled away from the scene of occurrence. The Sub-Inspector of Police, Pallikaranai, based on the complaint given by the petitioner, has registered a case in Cr.No.1325/2018 under Sections 147, 148, 341, 294(b), 323, 336, 427, 397, 506(ii) IPC and took up for investigation.

3. The detainees in both Habeas Corpus Petitions and co-accused were arrested on 03.10.2018 and they voluntarily came forward to give confession statements and based on the admissible portion of the confession statements, some incriminating articles were seized. The detainees and other accused were produced before the Court of Judicial Magistrate, Alandur, Chennai on 04.10.2018 and were ordered to be remanded to judicial custody till 16.10.2018 and it was extended upto 13.11.2018.

4. The Detaining Authority, namely the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenues, who have committed the crime, have already come to adverse notice in one case and their acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned orders of detention and challenging the legality of the same, the present Habeas Corpus Petitions are filed.

5. The learned counsel appearing on behalf of the detenues would submit that for revoking the orders of detention, passed against the detenues, representations have been submitted on 22.11.2018 and the Deputy Secretary, Home, Prohibition and Excise (X) Department had dealt with the same on 05.12.2018 and the Honble Minister for Electricity, Prohibition and Excise, had dealt with the same on 20.12.2018 and there were 14 days delay and excluding 4 days holidays, still there was a delay of 10 days in dealing with the said representations and in the absence of proper explanation, the said delay is fatal to the impugned orders of detention and therefore, prays for appropriate orders.

6. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State by drawing attention of this Court to the worksheet would submit that there were very many intermittent public holidays and therefore, it cannot be said that there was delay in consideration and disposing of the detenues' representations and would further add that the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the orders 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. A perusal of the worksheet as to the disposal of the representations would clearly reveal that the the Deputy Secretary, Home, Prohibition and Excise (X) Department had dealt with the same on 05.12.2018 and the Honble Minister for Electricity, Prohibition and Excise, had dealt with the same on 20.12.2018 and even excluding the Government holidays of 4 days, still there was a delay of 10 days in dealing with the said representations and no plausible or tenable explanation has been offered on behalf of the respondents as to the said delay. In the considered opinion of this Court, the delay in dealing with the representations violates the valuable right guaranteed to the detenues under Article 22 of the Constitution of India and hence on the sole ground, the impugned orders of detention warrant interference.

9. Accordingly, the Habeas Corpus Petitions stand allowed and the Detention Orders passed by the second respondent in Memo

Nos.BCDFGISSSV 1018/2018 & BCDFGISSSV 1017/2018, dated 02.11.2018 are set aside and the detainees viz., Dharaniswaran @ Dharani son of Manoharan male aged about 39 years and Siva, son of Kalimuthu, male aged 36 years, now both confined in Central Prison, Puzhal are set at liberty forthwith unless their detention / custody is required in connection with any other case / proceedings.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
State of Tamil Nadu
Prohibition and Excise Department,
Fort St. George, Chennai - 9.
2. The Commissioner of Police
Greater Chennai,
Veppery, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort.St.Geroge, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.Nos.2686 & 2690 of 2018

GJ-II(CO)
SSM(30/05/2019)

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