

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM:

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

H.C.P.No.2719/2018

Shanthi

.. Petitioner

vs.

1.State of Tamil Nadu rep.by
The Secretary to the Government
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.

2.The District Magistrate & District Collector
Salem District, Salem. ..

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the petitioner's husband by name Prabhu @ Katta Prabhu, son of Palaniappan, aged about 35 years, before this Court now confined in Central Prison, Salem, set him at liberty and to call for the records pertaining to the order of detention passed in CMP No.28/Goonda/C2/2018 dated 21.08.2018 passed by the 2nd respondent and set aside the same.

For Petitioner .. Mr.T.Muruganantham

For Respondents... Mr.C.Iyyappa Raj, APP

ORDER

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

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 21.08.2018 passed by the 2nd respondent, in and by which, the detenu / husband of the petitioner, has been branded as a 'Goonda' under the provisions of section 3[1] of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present habeas corpus petition.

2 As per the Grounds of Detention dated 21.08.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse case:

Sl No .	Name of the Police station and Crime No.	Section of law
1	Edappady PS Cr.No.266/2018 dated 03.07.2018	392 IPC

3 It is further averred in the Grounds of Detention that one Ponnusamy, son of Ammasi, a resident of Nachipalayam, Edappady Taluk, has lodged a complaint on the file of the Sub Inspector of Police, Edappady Police Station, alleging among other things that on 08.07.2018, at about 6.00 p.m., he went to Eri Road at Santhaipettai to meet his friend, viz., Kuzhandhai, and thereafter, when he was coming back, a person aged about 35 years, came to him and asked him to take the money out of his pocket and when the complainant questioned, he was threatened with dire consequences and also forcibly took away a sum of Rs.500/- from his pocket and when the complainant raised alarm, the detenu had fled away from the scene of occurrence. The Inspector of Police, attached to Edappady Police Station, based on the complaint, has registered a case in Cr.No.275/2018 for the commission of the offence u/s.392 IPC [ground case] and took up the case for investigation. The detenu was arrested at about 8.00 a.m., on 09.07.2018 and he voluntarily came forward to give a confession statement which was recorded in the presence of witnesses and in pursuant to the admissible portion of the same, incriminating articles were recovered. The detenu was produced before the Court of Judicial Magistrate No.2, Sankari, on the same day and was ordered to be remanded to judicial custody. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public peace and order and as such, branded him as a 'Goonda' and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present petition is filed.

4 The learned counsel for the petitioner would submit that two post detention representations dated 10.09.2018 have been submitted for revoking the impugned order of detention and while dealing with the first representation, there was a considerable delay in considering the same and since the delay has not been properly explained, the same is fatal for the reason that the valuable rights of the detenus guaranteed under

Article 22 of the Constitution of India, has been affected and therefore, prays for quashment of the impugned orders of detention.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and in the light of the intervening holidays, it cannot be said that there was a delay in considering and disposing of the representation and prays for dismissal of this petition.

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

7 As rightly pointed out by the learned counsel for the petitioner, the first post detention representation dated 10.09.2018 was submitted on behalf of the detenu and the same was received on 14.09.2018 ; remarks were called for on the same day, i.e., 14.09.2018, and the same were received only on 01.10.2018 and in between 14.09.2018 and 01.10.2018, there were 7 Government Holidays and excluding the same, there was a delay of 8 days in dealing with and considering the said representation. A perusal and consideration of the material would disclose that the said delay has not been properly explained at all by the Detaining Authority and in the absence of any plausible or tenable explanation, such a delay is fatal for the reason that the valuable rights of the detenu guaranteed under Article 22 of the Constitution of India, has been violated and hence, on this sole ground, the detention orders, impugned herein, are liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 21.08.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Salem, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

AP

To

1.The Secretary to the Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.

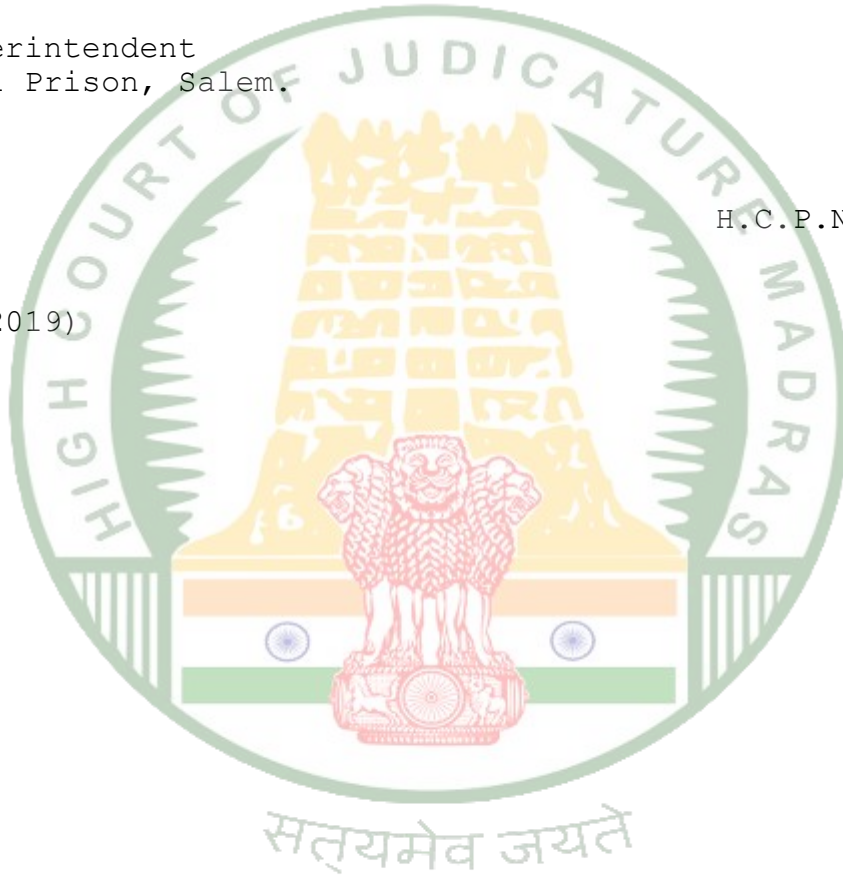
2.The District Magistrate & District Collector
Salem District, Salem.

3.The Public Prosecutor,
Madras High Court, Madras.

4.The Superintendent
Central Prison, Salem.

H.C.P.No.2719/2018

NA(CO)
SP(29/05/2019)



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