

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.2705 of 2018

V.Ponni

.. Petitioner

Vs.

- 1.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Chennai.
- 2.The Additional Chief Secretary
Government of Tami Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai - 600 009.
- 3.The Superintendent
Central Prison
Puzhal, 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 pertaining to the order of detention passed by the first respondent herein and made in No.916/B.C.D.F.G.I.S.S.S.V/2018 dated 06.10.2018, and to set aside the same and directing the first respondent to produce the detenu, the brother of the petitioner, Thiru.Samuvel, aged 25 years, S/o.Jayaseelan, now confined in Central Prison, Puzhal, Chennai, before this Court and thereby setting him at liberty.

For Petitioner .. Mr.Ganesh Rajan

For Respondents.. Mr.C.Iyyapparaj

Additional Public Prosecutor

ORDER

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

The petitioner, who is the sister of the detenu, namely Samuvel, S/o.Jayaseelan, aged 25 years, challenging the legality of the impugned order of detention dated 06.10.2018 passed by the first respondent, in and by which, her brother has

been branded as ''Goonda'' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, 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 detenu came to adverse notice in the following cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	J-2 Adyar Police Station Cr.No.391/2018	147, 148, 302 IPC

It is alleged in the grounds of detention that the defacto complainant, namely Ravi, who is the resident of No.8/46, 2nd Plot, Mailai Balaji Nagar, Pallikarnai, Chennai, has lodged a complaint on 12.07.2018, alleging that the detenu along with others, had wrongfully restrained him by using filthy language and also threatened him with dire consequences at knife point. While the detenu had caught hold of the complainant, the other accused took out their knives and sickles and placed it near the neck of the complainant and snatched a sum of Rs.3,000/- from his pocket and on he raising an alarm, the nearby public gathered there and to escape from that place, the accused hurled the bottles over the public, due to which, a panic situation prevailed there and taking advantage of the same, the accused fled away from the scene of occurrence. Based on the complaint, the Inspector of Police, J-2 Adyar Police Station registered a case in Crime No.394/2018 for the commission of offences under Sections 341, 294(b), 397, 336, 427 & 506(ii) IPC and took up the case [ground case] for investigation.

3. Some of the accused were arrested and they were remanded to judicial custody. During the course of investigation, the Inspector of Police received an information that the detenu along with some of the co-accused were surrendered before the District Munsif cum Judicial Magistrate, Sriperumbudur on 13.7.2018, and they were ordered to be remanded to police custody from 16.07.2018 to 19.07.2018, and subsequently, they were produced before the IX Metropolitan Magistrate, Saidapet, Chennai on 19.07.2018 and were remanded to judicial custody till 10.10.2018 as remand prisoner in Central Prison, Puzhal.

4. The Detaining Authority on being satisfied that the activities of the detenu in the ground case are prejudicial to the maintenance of public peace and order, has arrived at the subjective satisfaction and clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

5. The learned counsel for the petitioner would submit, admittedly the incident took place as early as 12.07.2018, whereas the impugned order of detention came to be passed only on 06.10.2018 and the bail application filed before the Principal Sessions Court came to be dismissed for default on 02.09.2018 and in the absence of any plausible or tenable explanation with regard to the said delay, the impugned order is liable to be quashed. It is further submitted that as regards the co-accused on the very same incident have moved Habeas Corpus Petitions in HCP.Nos.2448, 2240, 2457, 2580 and 2706 of 2018 and those petitions came to be allowed on various dates and hence, prays for quashment of the impugned order of detention.

6. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority on thorough consideration of the materials placed, has rightly derived the subjective satisfaction and clamped the order of detention and prays for dismissal of this petition.

7. This Court 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, the alleged incident has taken place on 12.07.2018 and the detention order came to be passed on 06.10.2018 and the bail application filed by the detenu came to be dismissed on 02.09.2018 and even afterwards, there was a delay of one month, and no plausible explanation was given by the detaining authority with regard to the belated passing of the detention order.

9. In view of the above, this Habeas Corpus petition is allowed and the detention passed by the first respondent in Memo No. 916/B.C.D.F.G.I.S.S.S.V/2018, dated 06.10.2018 is hereby set aside. The detenu, viz., Samuvel, Son of Mr.Jayaseelan, aged 25 years, now confined in Central Prison, Puzhal, Chennai,

is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Chennai.
- 2.The Additional Chief Secretary
Government of Tami Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai - 600 009.
- 3.The Joint Secretary,
Public(Law & Order), Fort St.George, Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2705 of 2018

NMI (CO)
CSL/29.05.2019

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