

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

HCP.No.2735 of 2018

Malathi

.. Petitioner

Versus

1.The Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The District Collector and District Magistrate
Perambalur District, Perambalur.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in Cr.M.P.No.36/2018 dated 14.11.2018 and quash the same and direct the respondents to produce the body and person of the petitioners husband namely Sasikaran, son of Ramanathan, aged about 25 years detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Mohammed Saifulla
for R.Alagumani

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 14.11.2018 passed by the 2nd respondent by invoking Section 2 (f) of the Tamil Nadu Act 14 of 1982, branding the detenu 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:

Sl.No.	Crime No.	Section of law	Date of occurrence
1.	Perambalur District: Perambalur PS Cr.No.425/2018	147, 148, 302 IPC @ 147, 148, 302,365,120(b), 323 and 34 IPC	25.06.2018
2.	Perambalur District: Perambalur PS Cr.No.639/2018	294(b), 341, 387 and 506 (ii) IPC	22.10.2018

3. It is further averred in the grounds of detention that on 23.10.2018, the defacto complainant namely Mahendran son of Narayanasamy, a resident of Kavulpalayam, Perambalur District had lodged a complaint on the file of the Sub Inspector of Police, Perambalur Police Station and alleging that on 22.10.2018, at morning hours, he after purchasing household articles, returning to his home by driving two-wheeler and while passing Arumadal Village, one car over-take his two-wheeler and intercepted his vehicle and one person, who alighted from the vehicle, disclosed his name as Vinoth and demanded money from the defacto complainant and when it was questioned by the defacto complainant, three persons who also alighted from the said car, disclosed their identity which include the detenu, brandishing knife and forcefully taken Rs.1,000/- from the shirt pocket of the defacto complainant. In this regard, a case in Cr.No.694 of 2018 under Sections 294(b), 341, 392, 397, 506(ii) IPC (Ground Case) was registered and took up the investigation. The detenu was arrested on 23.10.2018 and he was produced before the Court of Judicial Magistrate, Perambalur on 23.10.2018 and he was ordered to be remanded to judicial custody till 02.11.2018 and the remand period was extended till 08.11.2018 and 16.11.2018.

3. The Detaining Authority, on the basis of materials, 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 on behalf of the detenu would submit that for revoking the order of detention, post detention representations dated 24.11.2018 and 10.12.2018 were submitted and while dealing with the second post detention

representation, there was a considerable delay of 12 days and also drawn attention of this Court to the worksheet and would submit that in the absence of any proper explanation, the said delay is fatal to the impugned order of detention and prays for quashment of the impugned order of detention.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the representations have been duly considered and came to be disposed of, without any delay and he would further add that the Detaining Authority with due and proper application of mind, has rightly reached the conclusion and clamped the impugned order of detention and prays for dismissal of this 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 representation was received on 12.12.2018 and the remarks were received on 02.01.2019 and there was 20 days delay in receiving the remarks and excluding 8 days holidays, still there was 12 days delay in receiving the remarks. In the considered opinion of this Court, in the absence of any proper, tenable or plausible explanation, the said delay is fatal to the impugned order of detention for the reason that it has also caused prejudice to the constitutional valuable 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.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in Cr.M.P.No.36/2018 dated 14.11.2018 is set aside and the detenu namely Sasikaran, son of Ramanathan, aged about 25 years detained in Central Prison, Puzhal, Chennai, 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 to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate
Perambalur District, Perambalur.

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

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

5.The Public Prosecutor,
High court, Madras.

HCP.No.2735 of 2018

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nr 12/06/2019



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