

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2749/2018

S.Murali

.. Petitioner

vs.

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

2.The Commissioner of Police
Greater 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 with the order of detention passed by the 2nd respondent dated 16.10.2018 in Memo No.948/BCDFGISSSV/2018 against the petitioner friend Gopi @ Gopalakrishnan, male, aged 23 years S/o.Ramesh, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner ..

Mr.S.Senthil Vel

For Respondents ..

Mr.C.Iyyappa Raj, APP

ORDER

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

The friend of the detenu is the petitioner herein and challenging the

legality of the impugned order of detention dated 16.10.2018 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 16.10.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	J9 Thuraipakkam PS Cr.No.1449/2016	147, 148, 323, 324 & 302 r/w 149 IPC
2	J9 Thuraipakkam PS Cr.No.2017/2017	341, 326, 506[ii] IPC
3	J9 Neelankarai PS Cr.No.2/2018	294[b], 341, 307, 506[ii] r/w 34 IPC
4	J8 Neelankarai PS Cr.No.391/2018	341, 294[b], 324, 384, 506[ii] IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Suresh, son of Arasu, who is a resident of Chozhamandaladevi Nagar, Injambakkam, Chennai-115, is an auto driver by profession and at about 8.30 hours on 12.09.2018, he dropped the passenger

at Palavakkam and was riding his auto and when he was nearing Ice Factory at Neelangarai, the detenu wrongfully restrained him and put his hand into the complainant's shirt pocket for the purpose of taking out the money and when the complainant prevented the said action of the detenu, the detenu brandished a knife and threatened him with dire consequences and also abused the complainant by using unparliamentary words. The detenu snatched gold covering chain from the neck and also robbed cash of Rs.800/- from the shirt pocket of the complainant and when the defacto complainant raised alarm, public gathered and they were also threatened with dire consequences and taking advantage of the situation, the detenu fled away from the scene of occasionally. The Inspector of Police, attached to J8 Neelangarai Police Station, based on the complaint, has registered a case in Cr.No.1399/2018 for the commission of the offences u/s.341, 294[b], 323, 336, 427, 392 r/w 397 & 506[ii] IPC **[ground case]** and took up the case for investigation. The detenu was arrested at about 13.00 hours on 12.09.2018 near Akkarai TASMACH Shop and he admitted his involvement in the ground case as well as in the 4th Adverse case and 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 Alandur, on the same day and was ordered to be remanded to judicial

custody till 25.09.2018 and his remand period was extended for a further period till 23.10.2018. 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 the petitioner being the friend of the detenu, submitted post detention representation dated 10.12.2018 to the 1st respondent praying for revoking the impugned order of detention and the Deputy Secretary, Home, Prohibition and Excise [X] Department had dealt with the same on 20.12.2018 and the Hon'ble Minister for Electricity has dealt with the said representation only on 04.01.2019 and excluding 6 days public holidays, there was a delay of 7 days in dealing with and considering the said representations 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.

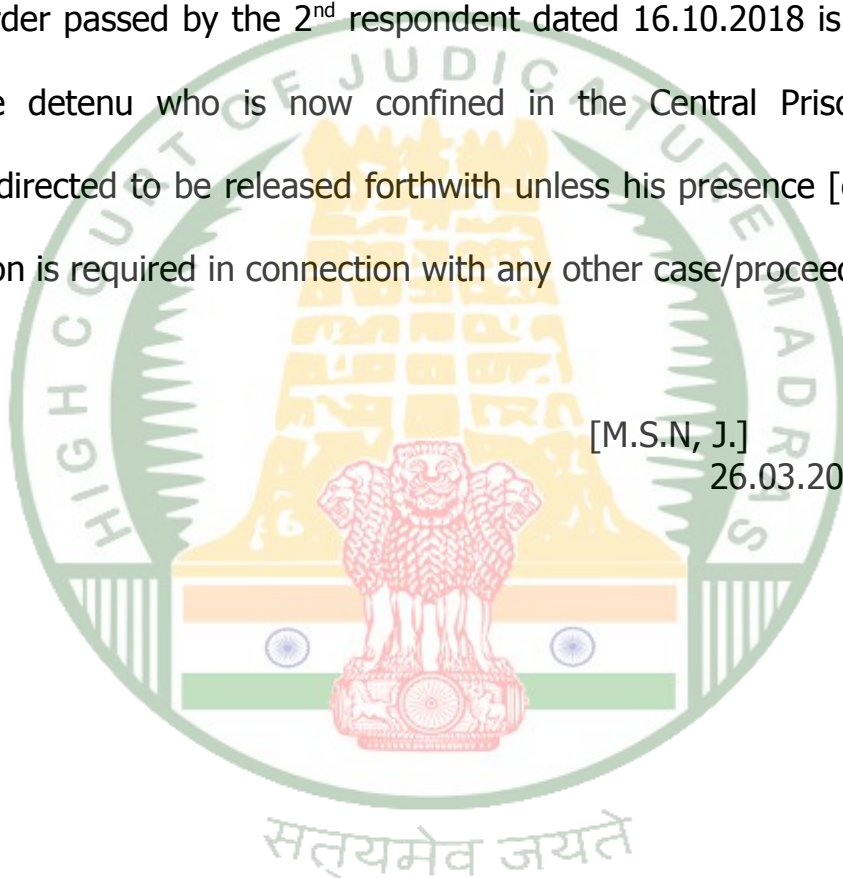
7 As rightly pointed out by the learned counsel for the petitioner, in dealing with and considering the post detention representation dated 10.12.2018 by the Deputy Secretary, Home, Prohibition and Excise [X] Department on 20.12.2018 and by the Hon'ble Minister for Electricity, Prohibition and Excise on 04.01.2019, there were 13 days delay and excluding 6 days Government Holidays, there were still 7 days delay. 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 order, impugned herein, warrants interference.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 16.10.2018 is hereby set aside. The detenu who is now confined in the 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.

[M.S.N, J.] [M.N.K., J.]
26.03.2019

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To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent
Central Prison, Puzhal, Chennai.



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AND
M.NIRMAL KUMAR, J.,

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