

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

HCP.No.2776 of 2018

Mrs.Saraswathi

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Petitioner

Versus

State Represented by

1.The Secretary to Government

Home, Prohibition & Excise Department
Secretariat, Fort St.George,
Chennai-9.

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

3.The Superintendent,
Central prison,
Salem.

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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 relating to the order of detention dated 03.11.2018 bearing C.M.P.NO.42/GOONDA/C2/2018 passed by the 2nd respondent against the petitioner's son Mr.Viji @ Vijayakumar S/o (late) Mathavan, Male, aged about 37 years, who is confined at Central Prison, Salem and quash the same and direct the respondent to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Manimaran

For Respondents: Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu, who, vide impugned Order of Detention dated 03.11.2018 passed by the 2nd respondent by invoking Section 2(f) of the Tamil Nadu Act 14 of 1982, in branding the detenu as ''Goonda'', came forward to file this 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 case:

SL. No.	Crime No.	Section of law	Date of occurrence
1.	Kodalampatty All Women Police Station Cr.No.6/2018	341, 324, 392, 506(ii) r/w 376 IPC	27.09.2018

It is further averred that on 27.09.2018 at about 19.00 hours, the defacto complainant namely Mr.Sankar, resident of M.G.R.Nagar, Yercaud, Salem District appeared before the Inspector of Police, Yercaud Police Station stating among other things that on 27.09.2018 at 13.00 hours, he intended to go to Salem and was standing near the Aavin Booth located near Ondikadai Auto Stand and at that time, two auto drivers namely Viji @ Vijayakumar and Kumar @ Arokiadass called him and at that time Kumar @ Arokiadoss twisted his hands to his back and caught hold of him and the detenu threatened the complainant at knife point and snatched away cash of Rs.1,000 as well as his mobile phone. When the defacto complainant raised an alarm, the public gathered and they were also threatened with dire consequences and taking advantage of the same, the detenu and the co-accused, fled away from the scene of occurrence. The Inspector of Police, Yercaud Police Station, upon receipt of the complaint from the defacto complainant, registered a case in Cr.No.221/2018 under Sections 341, 392 r/w. 397, 506(ii) IPC and commenced the investigation. The detenu and the co-accused were arrested already in connection with the adverse case on 27.10.2018 and formally arrested on 28.09.2018 and remanded to judicial custody till 23.10.2018.

3. The Detention 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 one case 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, passed against the detenu, the post detention representation dated 26.11.2018 and 06.12.2018 respectively were submitted and while dealing with the second representation, the Home, Prohibition and Excise Department called for remarks on 10.12.2018 and the remarks were received on 03.01.2019 and there was a delay of 21 days and excluding the holidays of 8 days, still there was a delay of 13 days between the remarks called and received and in the absence of proper explanation, the said delay is fatal to the impugned order of detention and therefore, prays for appropriate orders.

5. 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 the delay cannot be construed as fatal and the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and hence 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 appearing for the petitioner, there was an unexplained delay of 13 days in calling for and receiving the remarks even by excluding 8 days Government Holidays 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 detenu under Article 22 of the Constitution of India and hence on the sole 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 ref.no.C.M.P.NO.42/GOONDA/C2/2018 dated 03.11.2018 is set aside and the detenu namely Mr.Viji @ Vijayakumar S/o (late)

Mathavan, Male, aged about 37 years, who is confined at Central Prison, Salem 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 & Excise Department
Secretariat, Fort St.George,
Chennai-9.
- 2.The District Magistrate and District Collector
Salem District, Salem.
- 3.The Superintendent,
Central Prison, Salem.
- 4.The Joint Secretary to Government,
Public(Law & Order)
Fort St.George, Chennai-9
- 5.The Public Prosecutor
High Court, Madras.

+lcc to Mr.D.Manimaran, Advocate sr.28846

HCP.No.2776 of 2018

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nr 12/06/2019

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