

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2804 of 2018

Tmt.A.Jancy ... Petitioner/Wife of Detenu

-vs-

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The Commissioner of Police /
Greater Chennai, Vepery,
Chennai - 600 007. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 25.10.2018 in Memo No.972/BCDFGISSV/2018 against the petitioner's husband Anthony, Son of Arokiyadhas, aged about 38 years, who is confined at Central Prison, Puzhal, 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.V.Paarthiban
For Respondents: Mr.C.Iyyapparaj,
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 25.10.2018 in Memo No.972/BCDFGISSSV/2018 passed by the second respondent, in and by which the detenu has been branded as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, came forward with this Habeas Corpus Petition.

2. A perusal of the grounds of detention would disclose that the impugned order of detention came to be passed on a solitary incident. The grounds of detention reads that on 01.10.2018 at about 19.00 hours, the defacto complainant, who was serving as Village Assistant of Nandambakkam Village, was on duty and he received a phone call stating that a person was found dead with stab injury at Pillaiyar Koil Street, Periyar Nagar Extension. When the complainant rushed to the spot, he found a person, later ascertained as Karuppusamy, in a pool of blood and when the complainant enquired, he was informed that the deceased demanded money from his mother to consume liquor and it was refused, due to which the deceased damaged the idly shop of his mother and the accused Thiru.Vijay Kumar, detenu and Thiru.Ruthukumar, who were taking tiffin in the said shop questioned the deceased regarding the same and the deceased scolded them in filthy language. On 01.10.2018 at about 18.30 hours, while the deceased was standing behind Pillaiyar Temple at Periyar Nagar Extension 3rd Street, Nandambakkam, the detenu and two other accused threatened the deceased in filthy language and the accused Vijayakumar took out a knife hidden in his hip and assaulted him over his head. The deceased snatched the knife from the accused Vijayakumar and rushed to assault him and Vijayakumar sustained injury over his head. Immediately, the detenu snatched the knife from the deceased and assaulted the deceased. At the same time, another accused Ruthukumar caught hold of the deceased and the deceased sustained injuries over his head and all over his body and fell down in a pool of blood. The Inspector of Police, T-13 Kundrathur Police Station, on receipt of the complaint, registered a case in Crime No.1183/2018 for the offence under Section 302 IPC and took up the investigation. All the accused were arrested at about 22.00 hours on 01.10.2018 and they voluntarily came forward to give confession statements, based on which certain incriminating articles were seized. The detenu and the co-accused were produced before the Court of District Munsif cum Judicial Magistrate, Sriperumbur and ordered to be remanded to judicial custody till 16.10.2018 and their remand period was extended till 29.10.2018.

3. The second respondent/Detaining Authority, on consideration of the materials placed, has derived the subjective satisfaction that the detenu has already come to adverse notice in the above case and he has acted in a manner prejudicial to the maintenance of public order and accordingly, clamped the order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. Mr.V.Paarthiban, learned counsel appearing for the petitioner would submit that for revoking the order of

detention, post detention representation dated 09.11.2018 was submitted by the detenu and the Deputy Secretary has dealt with the same on 04.12.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise Department, Government of Tamil Nadu has dealt with the same on 20.12.2018 and there was a delay of 15 days and even excluding 4 days Government Holidays, still there was a delay of 11 days in considering the representation and on account of the same, the detenu is deprived of the valuable right guaranteed under Article 22 of the Constitution of India and hence, prays for quashment of the impugned order of detention.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents would submit that considering the heinous nature of the offence, it cannot be said that there was a delay in considering the representation submitted by the detenu and therefore, prays for dismissal of this Habeas Corpus Petition.

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

7. As rightly pointed out by the learned counsel appearing for the petitioner, there was a delay of 11 days in dealing with the representation of the detenu by the Deputy Secretary to Government and the Hon'ble Minister for Electricity, Prohibition and Excise Department, Government of Tamil Nadu and in the absence of any tenable and plausible explanation, the impugned order of detention is vitiated for the reason that the petitioner is deprived of the valuable right guaranteed under Article 22 of the Constitution of India and hence, on the sole ground, the impugned order of detention warrants interference.

8.In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in No.972/BCDFGISSV/2018 dated 25.10.2018 is set aside. The detenu viz., Anthony, Son of Arokiyadhas, aged about 38 years, who is confined at Central Prizon, Puzhal, Chennai is directed to be released forthwith unless his custody/detention is required in connection with any other case/proceedings.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Jvm

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The Commissioner of Police /
Greater Chennai, Vepery,
Chennai - 600 007.

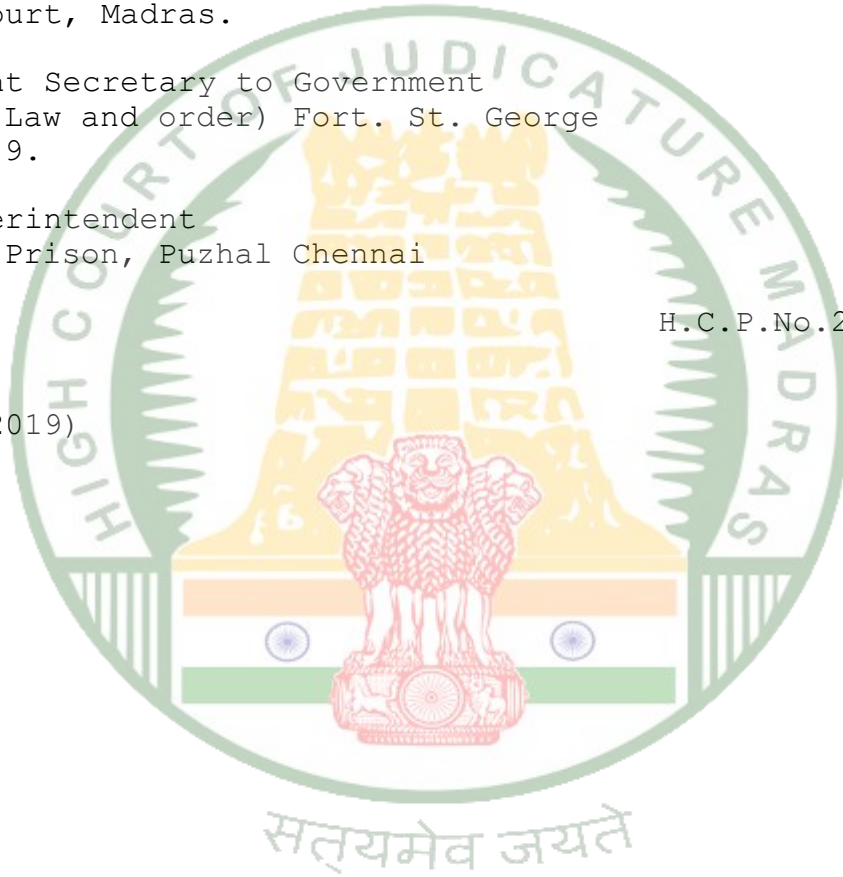
3.The Public Prosecutor,
High Court, Madras.

4.The Joint Secretary to Government
Public (Law and order) Fort. St. George
Chennai 9.

5.The Superintendent
Central Prison, Puzhal Chennai

H.C.P.No.2804 of 2018

VBA(CO)
SP(10/06/2019)



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