

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2814 of 2018

Kutti

.. Petitioner

Versus

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

2.District Collector and District Magistrate
Vellore District, Vellore-9.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 19.11.2018 in D.O.No.95/2018 against the petitioner friend of the detenu Boopalan, @ Selva male aged 34 years, S/o.Loganathan, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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

ORDER

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

The petitioner is the friend of the detenu, who, vide impugned Order of Detention dated 19.11.2018 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 cases:

<i>Sl.No.</i>	<i>Crime No.</i>	<i>Section of law</i>	<i>Date of occurrence</i>
1.	Vellore North Police Station Cr.No.329/2018	294(b), 324, 506(ii) IPC	21.05.2018

It is further averred in the grounds of detention that the defacto complainant viz., Thiru.Veechu @ Dinesh, a resident of Sathuvachari, Vellore, lodged a complaint on the file of Bagayam Police Station, alleging that he was arrested and enlarged on bail. On 10.10.2018 morning at about 09.40 a.m when the defacto complainant was going to ATM near Thorapadi M.g.R.Statue, some persons came in a two wheeler

and threw country bomb and tried to murder him and based on the complaint given in this regard, a case was registered in Cr.No.382/2018 for the commission of offence under Sections 147, 148, 307 IPC (ground case). During the course of investigation, the accused involved in the said case was arrested at about 09.15 a.m on 17.10.2018 and one of them voluntarily came forward to give a confession statement and some incriminating articles were seized in pursuant to the admissible portion of the confession statement. The detenu was produced before the Court of Judicial Magistrate No.1, Vellore on the same day and he was ordered to be remanded to judicial custody till 31.10.2018 and his remand period was further extended till 28.11.2018.

3. The Detaining Authority namely, the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already came to adverse notice in one case and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned orders 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 has drawn the attention of this Court to the worksheet and would submit that for revoking the order of detention passed against the detenu, two post detention representations dated 12.12.2018 and 19.12.2018 were submitted and while dealing with the first representation, remarks were called by the Home, Prohibition and Excise (IX) Department on 21.12.2018 and were received on 18.01.2019 and there was a delay of 27 days and even excluding 14 public holidays, still there was a delay of 13 days in receiving the said remarks and in the absence of proper or tenable explanation, the said delay is fatal to the impugned order of detention and therefore, prays for quashment of the impugned order.

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, in respect of the post detention representation dated 12.12.2018, remarks were called on 21.12.2018 and the same were received on 18.01.2019 and there was a delay of 27 days and even excluding 14 days Government holidays, still there was a delay of 13 days in receiving the remarks 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 representation 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.

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8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in proceedings D.O.No.95/2018 dated 19.11.2018 is set aside and the detenu namely

<http://www.judis.nic.in> Boopalan, @ Selva male aged 34 years, S/o.Loganathan, who is confined

M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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at Central Prison, Vellore, is set at liberty forthwith, unless his detention / custody is required in connection with any other case / proceedings.

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

16.04.2019

Internet : Yes/No

Index : Yes/No

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To

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3.The Public Prosecutor
High Court, Madras.

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