

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.2811 OF 2018

Saranya

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Petitioner

Vs

1. The State of Tamil Nadu rep.by its
Secretary to Government (Home)
Prohibition & Excise Department, Secretariat
Fort St.George, Chennai 600 009.

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

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Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the entire records leading to the detention order in Memo No.1041/BCDFGISSSV/2018 dated 16.11.2018 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Surendran S/o Gunasekaran now confined in Central Prison, Puzhal, Chennai, directing the person or body of the detenu before this Honourable Court and thereafter set him at liberty.

For Petitioner : Mr.N.Naresh

For Respondents : Mr.C.Iyyapparaj, Additional
Public Prosecutor

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O R D E R

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

Petitioner is the wife of the detenu. Challenging the legality of the impugned order of detention dated 16.11.2018 passed by the second respondent, in exercise of the powers contemplated under Section 3(1) and 3(2) 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), by branding him as a "Goonda", the present habeas corpus petition is filed. A perusal of the detention order dated 16.11.2018 would disclose that the detenu came to adverse notice in the following two cases.

S1 No .	Name of the Police station and Crime No.	Section of law
1	K2 Ayanavaram Police Station Crime No.82 of 2018	399 IPC
2	K2 Ayanavaram Police Station Crime No.377 of 2018	341, 294(b), 323, 392, 397 and 506 (ii) IPC

2. It is averred in the Grounds of Detention dated 16.11.2018 that on 21.10.2018 at about 04.30 Hrs, the Inspector of Police, Law and Order, K2 Ayanavaram Police Station received an information from the Kilpauk Medical College Hospital, rushed to the hospital, examined one Gudan, S/o Balamurthy and he disclosed, among other things, that on 20.10.2018 midnight after completing his works, he was returning to his home at about 00.30

Hrs of 21.10.2018 and at that time, four persons including the detenu Surendran, waylaid him, and one of them threatened him to pay money, by using unparliamentary words. One of them viz., Soori picked up a vessel like object and beat him and also in the process, took away Rs.500/- from his pocket and at that time one Michael and the detenu Surendran had caught hold him and the co-accused one Vasanthakumar beat him and he also threatened the defacto complainant with dire consequences. On receipt of the statement, the Inspector of Police, K2 Ayanavaram Police Station, registered a case in Crime No.525 of 2018 under Sections 147, 148, 341, 294(b), 323, 325, 336, 397 and 506(ii) IPC and took up investigation of the case (ground case).

3. It is further averred that on 21.10.2018, all the accused including the detenu were arrested and they voluntarily came forward to give a confession statement and based on the admissible portion of the confession statements, incriminating articles were recovered. Later on, the detenu and the other co-accused were produced before the Court of V Metropolitan Magistrate, Egmore (Allikulam) in connection with the said case (ground case) and on 07.09.2018, were remanded to judicial custody till 02.11.2018. The remand was extended till 16.11.2018. The Detaining Authority, on consideration and application of mind to the materials placed, found that the acts of the detenu are prejudicial to the maintenance of public peace and order and had derived at the subjective satisfaction and

clamped the impugned order of detention, branded him as a ''Goonda'' and detained him under the Tamil Nadu Act 14 of 1982 and challenging the legality of the same, the present habeas corpus petition is filed.

4. The learned counsel appearing on behalf of the petitioner draws the attention of this Court to the work sheet and would submit that the post detention representations dated 28.11.2018 was submitted, praying for revocation of the order of detention, which was received by Home, Prohibition and Excise IV Department on 07.12.2018. The remarks were received on 12.12.2018 and the Minister for Electricity and Prohibition and Excise dealt with the same on 20.12.2018 and there was a delay of 12 days in dealing with the representation and even by excluding the four public / government holidays, still there was a delay of 8 days in dealing with the said representation and since there was no proper and tenable explanation, the impugned order of detention is vitiated and hence prays for quashment of the impugned order of detention.

5. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the representation submitted on behalf of the detenu for revoking the order of detention has been duly considered and the detaining authority, after due and proper application of mind has rightly clamped the order of detention 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, while dealing with the post detention representation dated 28.11.2018, between the Deputy Secretary to the Government and the Honourable Minister for Electricity, Prohibition and Excise, there was a delay of twelve days and by excluding the four days, which were declared as public holidays, still there was a delay of eight days in dealing with the representation. In the considered opinion of this Court, the said delay, in the facts and circumstances of the case, and in the absence of acceptable and plausible explanation, would vitiate the right guaranteed under Article 22 of the Constitution of India. Hence, on this sole ground, the impugned order of detention warrants interference.

8. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 16.11.2018 in Memo No.1041/BCDFGISSSV/2018 is hereby set aside. The detenu, viz., Surendran, S/o Gunasekaran, aged about 28 years, 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.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

KST

To

1. The Secretary to Government (Home)
Prohibition & Excise Department, Secretariat
Fort St.George, Chennai 600 009.
2. The Commissioner of Police
Greater Chennai, Vepery, Chennai-600 007.
3. The Superintendent, Central Prison
Puzhal, Chennai 600 066.
4. The Joint Secretary to Government Public
(Law & Order)
Fort St.George, Chennai 600 009.
5. The Public Prosecutor,
High Court, Madras

H.C.P.No.2811 of 2018

RSI (CO)
GMY (30/05/2019)

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