

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.04.2019

CORAM:
THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P. No.2808 of 2018

K.Lakshmi

... Petitioner

Vs.

1.The Secretary to Government
Home, Prohibition & 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 in connection with the order of Detention passed by the second respondent dated 17.11.2018 in Memo.No.1043/BCDFGISSSV/2018 against the petitioner's son Kuppa @ Kuppusamy, male aged 23 years S/o.Karuthakannu, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioners .. Mr.S.Senthilvel

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

ORDER

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

The petitioner, who is the mother of the detenu namely Kuppa @ Kuppusamy S/o. Karuthakannu, aged 23 years, challenging the legality of the impugned order of detention dated 17.11.2018 passed by the second respondent, in and by which, the detenu has been branded as "Goonda" under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), has come forward to file the present Habeas Corpus Petition.

2. A perusal of the grounds of detention would disclose that the detenu came to adverse notice in the following eight cases :

Sl No.	Name of the Police station and Crime No.	Section of law
1	H8 Thiruvottiyur Police Station, Cr.No.1953/2017	379 IPC
2	H8 Thiruvottiyur Police Station, Cr.No.1977/2017	379 IPC
3	H8 Thiruvottiyur Police Station, Cr.No.2051/2017	379 IPC
4	H8 Thiruvottiyur Police Station, Cr.No.2091/2017	379 IPC
5	H8 Thiruvottiyur Police Station, Cr.No.2119/2017	379 & 511 IPC
6	H8 Thiruvottiyur Police Station, Cr.No.114/2018	379 IPC
7	H8 Thiruvottiyur Police Station, Cr.No.766/2018	457, 380 & 511 IPC
8	H8 Thiruvottiyur Police Station, Cr.No.1186/2018	457 & 380 IPC

It is further stated in the grounds of the detention that the defacto complainant namely Thiru.Raj is a resident of Indira Gandhi Nagar, Chennai - 600 019, and on 19.10.2018, while he was proceeding at Village Road and on nearing MGR Salai junction, a person, who came in the opposite direction, wrongfully restrained the defacto complainant and threatened him to take out the money, he possessed. Since the defacto complainant replied in negative, the accused abused him and also disclosed his identity and took out a knife from his hip and stabbed over the throat of the defacto complainant, however the defacto complainant escaped from attack. The accused who was later identified as detenu, snatched away a sum of Rs.2,000/- cash and cell phone from the defacto complainant. The detenu by brandishing his knife over the public and also hurled the cool

drink bottles, created a panic situation in the said area and taking advantage of it, he fled away from the scene of occurrence. Thereafter, the defacto complainant lodged a complaint on the file of H4 Thiruvottiyur Police Station and based on the complaint, the Inspector of Police registered a case in Crime No.1246/2018 for the commission of offences under Sections 341, 336, 294(b), 427, 392, 397 & 506 (ii) IPC and took up the case [ground case] for investigation.

3. The detenu was arrested at 14.00 hrs. on 19.10.2018 and he voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized. The detenu was produced before the Judicial Magistrate Court, Thiruvottiyur on the same day, and the detenu was ordered to be remanded to judicial custody till 02.11.2018 as remand prisoner in Central Prison, Puzhal, Chennai and his remand period was extended till 30.11.2018

4. The Detaining Authority on being satisfied that the activities of the detenu in the ground case are prejudicial to the maintenance of public peace and order, has clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

5. The learned counsel appearing for the petitioner would submit that post detention representation dated 10.12.2018 was submitted by the petitioner and the said representation was received by the Deputy Secretary to Government, who dealt with the same on 20.12.2018 and thereafter, the Hon'ble Minister (Electricity, Prohibition and Excise) has dealt with the same only on 14.01.2019 and hence, there was a delay of 14 days and even after deducting six Government holidays, still there was delay of eight days in dealing with the said representation and the said delay is fatal for the reason that the valuable rights of the detenu guaranteed under Article 22 of the Constitution of India, has been affected and therefore, prays for quashment of the impugned order of detention.

6. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the delay appears to be only minimal and the Detaining Authority after due and proper application of mind to the entire facts and circumstances, has rightly clamped the order of detention and the delay pointed out by the learned counsel for the petitioner may not be fatal and prays for dismissal of this Habeas Corpus Petition.

7. This Court considered the rival submissions and also perused the materials placed before it.

8. As rightly pointed out by the learned counsel appearing for the petitioner and a perusal of the working sheet as to the disposal of the representation would disclose that the representation submitted by the mother of the detenu/petitioner herein has been dealt with various authorities and the Deputy Secretary has dealt with the same on 20.12.2018 and however, the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 14.01.2019 and between 20.12.2018 and 14.01.2019, there were 6 Government Holidays and excluding the same, still there was a delay of 8 days in considering the said representation. In the considered opinion of the Court, the said delay, in the facts and circumstances, appears to be considerable and no plausible explanation has been offered as to the delay in considering the said representation and on account of the said delay, the valuable right 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, is liable to be set aside.

9. In view of the above, these Habeas Corpus petition is allowed and the detention order passed by the second respondent in No.1043/BCDFGISSSV/2018 dated 17.11.2018 is hereby set aside. The detenu, viz., Kuppa @ Kuppusamy, S/o. Karuthakannu, aged about 23 years, now confined at Central Prison, Puzhal, Chennai, is directed to be released forthwith unless their presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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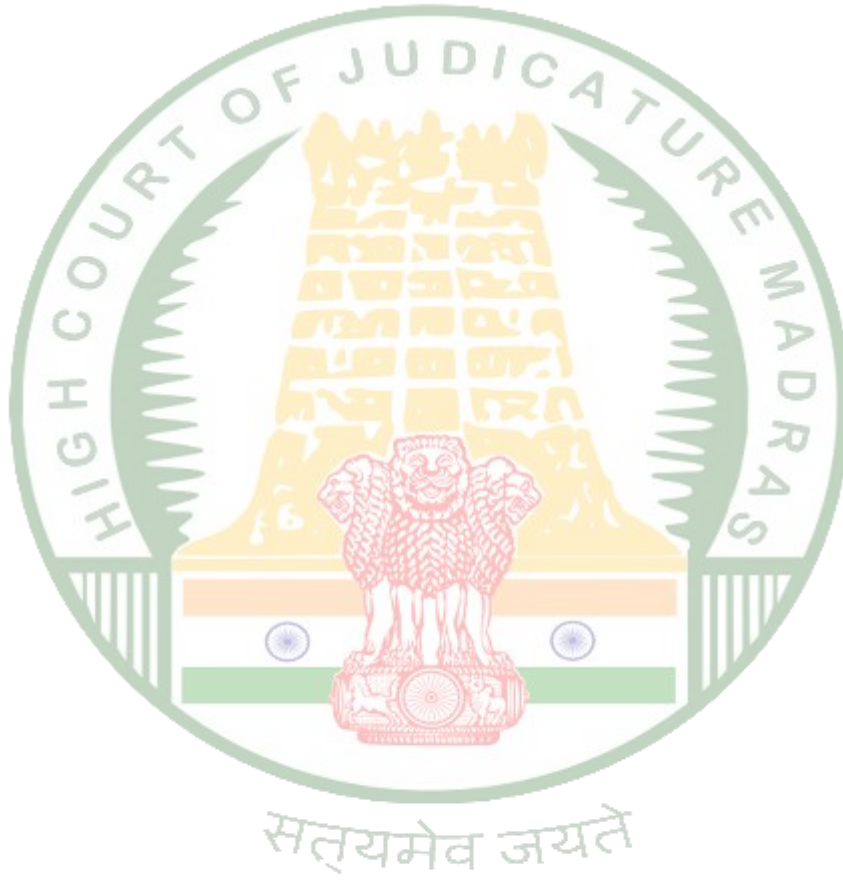
- 1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Police
Greater Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St. George, Chennai-9.

5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2808 of 2018

SV (CO)

RRS (25/06/2019)



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