

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.2841 of 2018

T.Manimaran ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by the Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai - 600 009.

2.The Commissioner of Police /
Detaining Authority
City Police Office,
Huzur Road
Coimbatore City
Coimbatore - 18. ... 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 detention order in C.No.107/G/IS/2018, dated 22.09.2018, passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's friend G.Rajesh Kannan, S/o.Ganesan, aged about 25 years, the detenu now confined in Central Prison, Coimbatore, before this Court and set the petitioner's friend G.Rajesh Kannan, S/o.Ganesan, aged about 25 years, the detenu herein, at liberty.

For Petitioner .. Mr.U.Yuvaraj

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

ORDER

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

The petitioner, who is the friend of the detenu, namely G.Rajesh Kannan, S/o.Ganesan, aged 25 years, challenging the legality of the impugned order of detention dated 22.09.2018, passed by the second respondent, in and by which, his friend/detenu has been branded as a 'Goonda' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, 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), came forward to file the present Habeas Corpus Petition.

2. A perusal of the grounds of detention would disclose among other things that the order of detention came to be passed on a solitary incident. It is alleged in the grounds of detention that on 30.06.2018, on receipt of information, the Sub Inspector of Police, Law and Order, B-2, R.S.Puram Police Station, Coimbatore City, proceeded to the Government Hospital, Trichy and met one Vishnuraj as in-patient and recorded his statement, wherein he had stated that on 29.06.2018, he went to Palakkad in connection with flower business and collected a cash of Rs.1,85,000/- and returned home. The next day (i.e., 30.06.2018) at about 3.30 hours, he took a cash of Rs.1,62,000/- along with him and proceed to his shop in his two wheeler, and while he was nearing the public toilet at Lingappa Chetty Street, Coimbatore, a white colour car which came in the opposite direction, dashed against his two wheeler, due to which, the complainant had fell down. Immediately, four persons came out of the car and bundled the complainant into the car and when he shouted for help, one person in the car stabbed him on the left thigh and also snatched a cash of Rs.1,62,000/- from the complainant. The accused also made a phone call to the complainant's father and demanded ransom amount, and when his father replied in negative, they tied the hands of the complainant and dropped him in a remote area and fled away. The Sub Inspector of Police, B-2, R.S.Puram Police Station, Coimbatore City, on receipt of the complaint, registered a case in Crime No.825/2018 for the commission of offences under Section 364(A), 395 r/w. 397 IPC and took up the case for investigation.

3. The detenu was arrested on 26.07.2018 at 10.00 hours and he voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, incriminating article was seized. The detenu was produced

before the Judicial Magistrate No.I, Coimbatore on 26.07.2018 and he was remanded to judicial custody till 09.08.2018 as remand prisoner in Central Prison Coimbatore, and his remand period was extended till 29.09.2018.

4. The Detaining Authority, on being satisfied that the activities of the detenu are prejudicial to the maintenance of public order and as such, branded the detenu as ''Goonda'' and 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 has drawn the attention of this Court to paragraph No.7 of the grounds of the detention order, wherein it would state that the detenu in connection with the ground case has filed a bail application in C.M.P.No.2441/2018 before the Principal District and Sessions Judge, Coimbatore, and the same was dismissed on 24.08.2018, and the Detaining Authority has derived the subjective satisfaction, as to the real and imminent possibility of the detenu coming out on bail in the said case and indulge in similar activities which are prejudicial to public peace and order, and the Detaining Authority has also relied on the statement of the brother of the detenu namely G.Vinoth Kumar, that steps are being taken to file a bail application for release of the detenu in ground case. The learned counsel also contends that after a lapse of one month, the impugned order of detention came to be passed on 22.09.2018 and in the light of the delay in passing the impugned order, the subjective satisfaction derived by the Detaining Authority has to be vitiated and prays for quashment of the same.

6. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that in the light of the above facts and circumstances and considering the heinous nature of the crime, the said delay cannot be considered as fatal, and therefore, only after due and proper application of mind, the Detaining Authority has rightly clamped the order of detention and prays for dismissal of this petition.

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

8. The bail application filed by the detenu in the ground case was dismissed on 24.08.2018 and though the statement of the brother of the detenu was recorded that steps are being taken to file an application for bail, the fact remains that still there was nearly more than one month delay in passing the impugned

order of detention, and no plausible or tenable explanation as to the delay in passing of the detention order, has been provided by the Detaining Authority, hence on this sole ground, the impugned order of detention warrants interference.

9. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 22.09.2018 is hereby set aside. The detenu, viz., G.Rajesh Kannan, son of Mr.Ganesan, aged 25 years, who is now confined in the Central Prison, Coimbatore, 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 V)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police /Detaining Authority
City Police, Huzur Road, Coimbatore City, Coimbatore - 18.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai-9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2841 of 2018

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srg 01/07/2019