

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.2854 of 2018

Mary

... Petitioner

Vs.

1.The Commissioner of Police
Greater Chennai.

2. The Secretary to Government of Tamil Nadu,
Home, Prohibition & Excise Department
Secretariat,
Chennai - 600 009.

.. 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 Memo.No.1023/BCDFGISSSV/2013 on the file of the first respondent, quash the detention order dated 08.11.2018 and direct the production of the detenu Anandharaj, son of Pandurangan, presently detained at Central Prison, Puzhal, Chennai, under the Tamil Nadu Act 14 of 1982, before this Court and set him at liberty.

For Petitioners .. Mr.A.M.Rahamath Ali

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 Anandharaj, aged 36 years, challenging the legality of the impugned order of detention dated 08.11.2018 passed by the first respondent, in and by which, the detenu has been branded as ''Drug Offender'' 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), 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 case :

Name of the Police station and Crime No.	Section of law
T-12, Poonamallee Police Station, Cr.No.947/2018	8(c) r/w.25, 20 (b) (ii) (B) NDPS Act, 1985

It is further stated in the grounds of the detention that while the Sub Inspector of Police, attached to T-12 Poonamallee Police Station, was on duty on 11.10.2018, he received a phone call from the Informer, that a person was selling Ganja-narcotic substance, near Sakthi Gardens, Senneerkuppam. Immediately, the Sub Inspector of Police along with the police reached the spot and noticed a person holding a black colour plastic bag, moving in a suspicious manner and administering warrant, the said person, who was later identified as detenu, was put to search and he was found in possession of polythene bag, which contained 1200 grams of Ganja and contraband was seized and samples were drawn and it was sealed and labelled at the spot. Thereafter, the accused along with the incriminating articles were brought to T-12 Poonamallee Police Station and a case was registered against the detenu in Cr.No.1177/2018 for the commission of offences under Section 8(c) 25 r/w.20 (b) (ii) (B) of NDPS Act 1985 and took up the case for investigation.

3. During investigation, the detenu has admitted his involvement in the said crime and came forward to give confession statement, which was recorded by the Inspector of Police, in the presence of witnesses and based on the admissible portion of the confession statement, the factum of involvement in the adverse case was also revealed, and that the detenu was produced before the Court of Judicial Magistrate No.II, Poonamallee on 11.10.2018 and he was ordered to be remanded to the judicial custody till 25.10.2018 as remand prisoner at Central Prison, Puzhal, Chennai.

4. The Detaining Authority on being satisfied that the activities of the detenu in the ground case are prejudicial to

the maintenance of public health and public order, has clamped the impugned order of detention, branding the detenu as "Drug Offender" 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 the work sheet and would submit that to revoke the impugned order of detention, two post detention representations dated 30.11.2018 have been submitted by the petitioner and in respect of the second representation, the Deputy Secretary to Government has 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 04.01.2019 and even after deducting 6 intervening Government holidays, still there was delay of 8 days in dealing with the said representation, and in the absence of any such proper explanation, the said delay is fatal 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 in the facts and circumstances of the case, the delay pointed out by the learned counsel appearing for the petitioner cannot be said to 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 there was a delay of 8 days in dealing with the said representation submitted by the mother of the detenu/petitioner herein, by the Deputy Secretary to Government and the Hon'ble Minister for Electricity, Prohibition and Excise, and in the absence of any proper or tenable explanation, such delay is fatal for the reason that 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 of detention warrants interference.

9. In view of the above, this Habeas Corpus petition is allowed and the detention order passed by the first respondent in No.1023/BCDFGISSSV/2018 dated 08.11.2018 is hereby set aside. The detenu, viz., Anadharaj, S/o. Pandurangan, aged about 36 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.

s/d-
Assistant Registrar

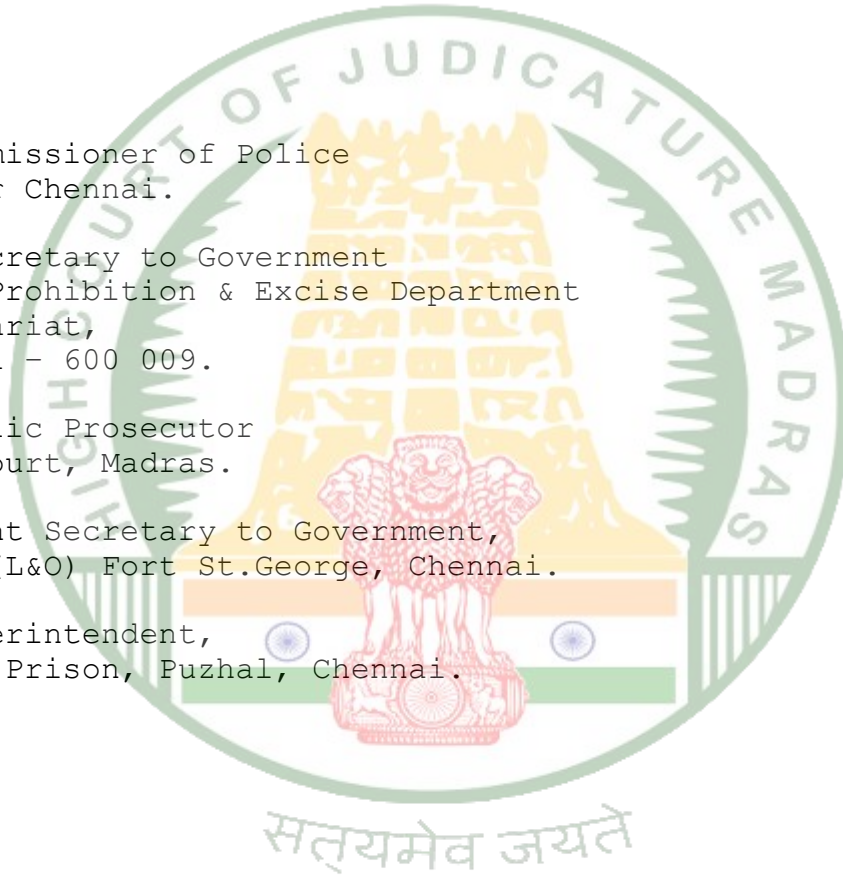
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Sub-Assistant Registrar

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To:

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



H.C.P.No.2854 of 2018

RSV(CO)
SNI(24/05/2019)

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