

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2868/2018

Mariyammal

.. Petitioner
Mother of the detenue

vs.

1.The State of Tamil Nadu
rep.by Secretary to the Government
Department of Prohibition & Excise [Home]
Fort St George, Chennai 600 009.

2.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram. .. 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 No.96/BCDFGISSSV/2018 dated 29.11.2018 on the file of the 2nd respondent herein and set aside the same as illegal and produce the detenu Premkumar @ Karuppan, son of Prakash, aged about 24 years who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner .. Mr.Ilayaraja Kandasamy

For Respondents .. Mr.C.Iyyappa Raj, APP

ORDER

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

The mother of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 29.11.2018 passed by the 2nd respondent, in and by which, the detenu / son of the petitioner, has been branded as a 'Goonda' under the provisions of section 3[1] 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), came forward to file the present habeas corpus petition.

2 As per the Grounds of Detention dated 29.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice

in the following cases:-

i) Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Madurantakam PS Cr.No.123/2018	397 read with 149 IPC
2	Chithamur PS Cr.No.54/2018	392 IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Paramasivam, son of Varadhan, a resident of Pazhamathur Village, Madurantakam Taluk, Kancheepuram District, has lodged a complaint on the file of the Sub Inspector of Police, Padalam Police Station alleging that at about 9.45 hours on 11.11.2018, when he was waiting at the bus stop for proceeding to Madurantakam, a person who later identified himself as the detenu, came in a motor cycle and demanded money from the complainant and when he refused to part with the same, the detenu brandished a knife and abused him using a filthy word and also assaulted him and when the defacto complainant raised an alarm, public gathered there and they were also threatened with dire consequences and taking advantage of the situation he fled away from the scene of crime and in the process he had also taken away cash of Rs.1000/- from the complainant. The Sub Inspector of Police attached to Padalam Police Station, registered a case in Cr.No.392/2018 for the commission of the offences u/s.341, 294[b], 324, 392, 397 506[ii] IPC read with 3[i] of Tamil Nadu Property [Prevention of Damage and Loss] Act, 1992 IPC [ground case] and took up the case for investigation. During the course of investigation, the detenu was arrested at about 11.45 a.m., on 11.11.2018 and he voluntarily came forward to give confession statement, which were recorded in the presence of witnesses and in pursuant to the admissible portion of the same, incriminating articles were recovered. The detenu was produced before the Court of Judicial Magistrate No.1, Chengalpattu, on 11.11.2018 and was ordered to be remanded to judicial custody till 23.11.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public peace and order and as such, branded him as a "Goonda" and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present petition is filed.

4 The learned counsel for the petitioner would submit that for revoking the impugned order of detention, post detention representation dated 10.01.2019 was submitted and the Joint Secretary, Home, Prohibition and Excise [XI] Department has dealt with the same on 23.01.2019 while the Minister for Electricity, Prohibition and Excise has dealt with the said representation only on 07.02.2019 and in between 23.01.2019 and 07.02.2019, there were 4 intervening Government Holidays and excluding the same, still
4 intervening Government Holidays and excluding the same, still
delay of 9 days in dealing with and considering the

said representation and since the delay has not been properly explained, the same 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 orders of detention.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and in the light of the intervening holidays, it cannot be said that there was a delay in considering and disposing of the representation 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, the representation dated 10.01.2019 was submitted on behalf of the detenu for revocation of the impugned order of detention and a perusal of the worksheet produced before this Court would disclose that the Joint Secretary, Home, Prohibition and Excise [XI] Department had dealt with the said representation on 23.01.2019 and the Minister for Electricity, Prohibition and Excise had dealt with the same only on 07.02.2019 and even excluding the Government Holidays of 4 days [26.01.2019 ; 27.01.2019 ; 02.02.2019 ; 03.02.2019 respectively], still there was a delay of 9 days in dealing with and considering the said representation by the authorities concerned. A perusal and consideration of the material would disclose that the said delay has not been properly explained at all by the Detaining Authority and in the absence of any plausible or tenable explanation, such a delay is fatal for the reason that the valuable rights 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.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 29.11.2018 is hereby set aside. The detenu 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

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

- 1.The Secretary to the Government
State of Tamil Nadu
Department of Prohibition & Excise [Home]
Fort St George, Chennai 600 009.
- 2.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.
- 3.The Superintendent
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public Law & Order,
Fort St.George,
Chennai-9.
- 5.The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.2868/2018

GR[CO]
MK:08/06/2019



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