

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.04.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
H.C.P.No.2940/2018

R.Chitra .. Petitioner/Wife of the Detenu

vs.

- 1.The State of Tamil Nadu
rep.by the Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate
Vellore District, Vellore.

.. 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 order passed by the 2nd respondent order in C3/D.O/No.93/2018 dated 19.11.2018 and quash the same and produce the detenu Thiru Rajini, aged 37 years, son of Mahalingam, who is detained in Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner .. Mr.B.Gopalakrishnan
For Respondents.. Mr.C.Iyyappa Raj, APP

ORDER

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

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 19.11.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as ''Sand Offender'' 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 19.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i)Adverse cases:

S1 No .	Name of the Police station and Crime No.	Section of law
1	Ranipet PS Cr.No.315/2017	379, 430 IPC
2	Rathinagiri PS Cr.No.236/2017	379, 430 IPC r/w. Section 21[1] of Mines and Minerals [Development and Regulation] Act, 1957
3	Walajapet PS Cr.No.748/2017	379, 430 IPC
4	Ranipet PS Cr.No.215/2018	379, 430 IPC

3 It is further averred in the Grounds of Detention that on 30.10.2018 at about 09.00 a.m., the Sub Inspector of Police, attached to Walajapet Police Station along with police party were mounting surveillance in Palar river bed in front of Arichandiran Koil at Vannivedu Pump House and they noticed a Tipper Lorry bearing Regn.No.TN-28-F-6171 plying towards the river driven in a rash and negligent manner and though signal was given to halt the lorry, the driver, viz., Rajini [detenu herein], abused the police party and drove the lorry in a rash and negligent manner and also made an attempt to run over the police personnel. The Walajapet Police Station has registered a case in crime No.652/2018 for the commission of the offences u/s.379, 430, 353, 307 IPC r/w section 21[4] of Mines and Minerals [Development and Regulation] Act, 1957 [ground case] and the Inspector of Police at about 12.00 noon on 30.10.2018, arrested the detenu and the detenu voluntarily came forward to give a confession statement which was recorded in the presence of witnesses and in pursuant to the admissible portion of the same, incriminating articles were recovered. The detenu along with the seized lorry and illegally quarried river sand, was brought to the Police Station and thereafter, he was produced before the Court of Judicial Magistrate, No.2, Walajapet on 30.10.2018 and was ordered to be remanded to judicial custody till 12.11.2018 and his remand period was further extended till 26.11.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of environment and illegal quarrying of the river sand would also affect the ground water level and as such, branded him as a 'Sand Offender' 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 has drawn the attention of this Court to the worksheet and would submit that for revoking the order of detention, a post detention representation dated 15.12.2018 was submitted and the same was received on 19.12.2018 ; remarks were called on the same day, i.e., on 19.12.2018 and however, the remarks were received on

31.12.2018 and in between those days, there was a delay of 12 days and even excluding 4 days public holidays, still there was a delay of 8 days in receiving the remarks and in the absence of any explanation as to the belated receipt of the remarks, the valuable rights guaranteed under Article 22 of the Constitution of India has been violated and therefore, 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 Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and in the light of the facts and circumstances of the present case, the delay cannot be fatal 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, on receipt of the representation on 19.12.2018, remarks were called for on the same day ; but the same was received only on 31.12.2018 and in between, there was a delay of 12 days and even by deducting 4 Government Holidays, there was a delay of 8 days 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 19.11.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Vellore, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

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Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AP
To

1.The Secretary to the Government
State of Tamil Nadu,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The District Collector & District Magistrate
Vellore District, Vellore.

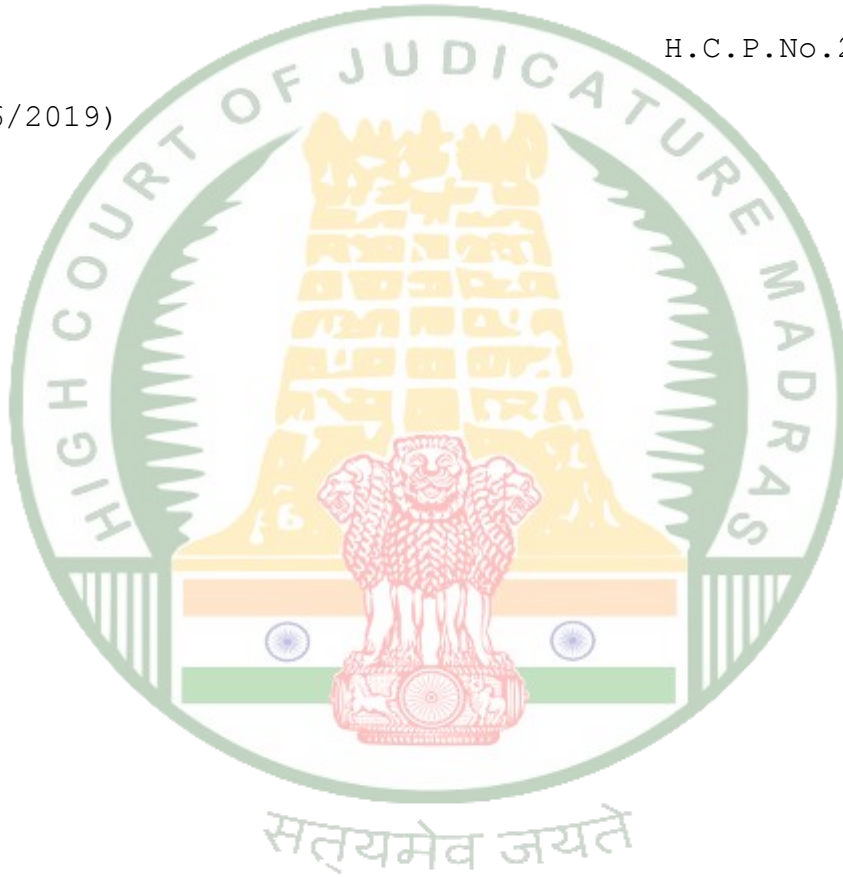
3.The Public Prosecutor,
Madras High Court, Madras.

4.The Superintendent
Central Prison, Vellore.

5.The Joint Secretary to Government
Public (Law and order)
Fort St.George Chennai 9.

H.C.P.No.2940/2018

nmI (CO)
A.SK(24/06/2019)



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