

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE M. NIRMAL KUMAR

H.C.P.No.2984 of 2018

Tmt.Andal

...Petitioner

Vs.

1.State of Tamil Nadu
rep.by its Secretary to Government
Department of Prohibition and Excise (Home)
Fort St.George,
Chennai-600 009.

2.The District Collector,
and District Magistrate,
Cuddalore District,
Cuddalore.

...Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus to call for the entire records made in No.C3/D.O/73/2018 dated 30.11.2018 on the file of second respondent herein quash the same as illegal and direct the respondent to produce the detenu Irula Anbazhagan son of Murugesan aged 61 years, now confined at Central Prison, Cuddalore, before this Court and set at liberty to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.C.Iyyappa Raj

Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu and challenging the legality of the impugned Order of Detention dated 30.11.2018 passed by the 2nd respondent by invoking Section 2(f) of the Tamil Nadu Act 14 of 1982, in branding the detenu as ''Goonda'', came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the

following cases:

SL. No.	Crime No.	Section of law	Date of occurrence
1.	Mayiladuthurai P.S.Cr.No.1004/2013	Section 457, 380 IPC	18.12.2013
2.	Kumaratchi P.S.Cr.No.207/2017	Section 294(b), 324, 506(ii) IPC	09.09.2017
3.	Kumaratchi P.S.Cr.No.119/2018	Section 457 & 392 IPC	13.08.2018

It is further averred in the grounds of detention that the defacto complainant namely Mohan, son of Albert residing at No.778, East Cemetery Road, Old Washermenpet, Chennai-21 is a Auto Driver by profession and in the course of his occupation, he was wrongfully restrained by the detenu and threatened with dire consequences and he was asked to part with the money and when the defacto complainant raised an alarm, public gathered and they were also threatened by brandishing knife and taking advantage of the situation, fled away from the scene of occurrence. On a complaint from the defacto complainant, the Inspector of Police, Law and order, H-1, Washermenpet Police Station has registered a case in Cr.No.853/2018 under Sections 341, 294(b), 323, 307, 336, 427 & 506(ii) IPC (Ground case). The detenu was arrested at about 12.30 hours on 17.09.2018 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 Court of XV Metropolitan Magistrate, George Town, Chennai and he was ordered to be remanded to judicial custody till 01.10.2018 and the remand period was extended upto 15.10.2018.

3. The Detaining Authority, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, has already came to adverse notice in three cases and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to the worksheet and would submit that for revoking the order of detention passed against the detenu, a post detention representation dated 19.12.2018 was submitted and the remarks were called on 19.12.2018 and the reminder were sent on 27.12.2018 and the remarks were received on 07.01.2019 and in between 27.12.2018 and 07.01.2019, there was a delay of 18 days in calling and receiving the remarks and even excluding 8 days public holidays, still there

was a delay of 10 days in dealing with the said representation and in the absence of proper explanation, the said delay is fatal to the impugned order of detention and therefore, prays for quashment of the impugned order.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State by drawing attention of this Court to the worksheet would submit that the delay cannot be construed as fatal and the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and hence 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 appearing for the petitioner, the representation dated 17.12.2018 was received on 19.12.2018 by Home, Prohibition and Excise (XI) Department and remarks were called on the same day and it was received on 27.12.2018 and there was a delay of 18 days in receiving and calling for the remarks and even excluding 8 days public holidays, still there was a delay of 10 days in receiving the remarks and the said delay is fatal to the impugned order of detention and no plausible or tenable explanation has been offered on behalf of the respondents as to the said delay. In the considered opinion of this Court, the delay in dealing with the representation violates the valuable right guaranteed to the detenu under Article 22 of the Constitution of India and hence on the sole ground, the impugned order of detention warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in proceedings in Na.Ka.No.C3/D.O/73/2018 dated 30.11.2018 is set aside and the detenu namely Irula Anbazhagan, son of Murugesan aged 61 years who is now confined at Central Prison, Cuddalore, is set at liberty forthwith, unless his detention / custody is required in connection with any other case / proceedings.

Sd/-
Deputy Registrar(CJ.Conf)

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Sub Assistant Registrar

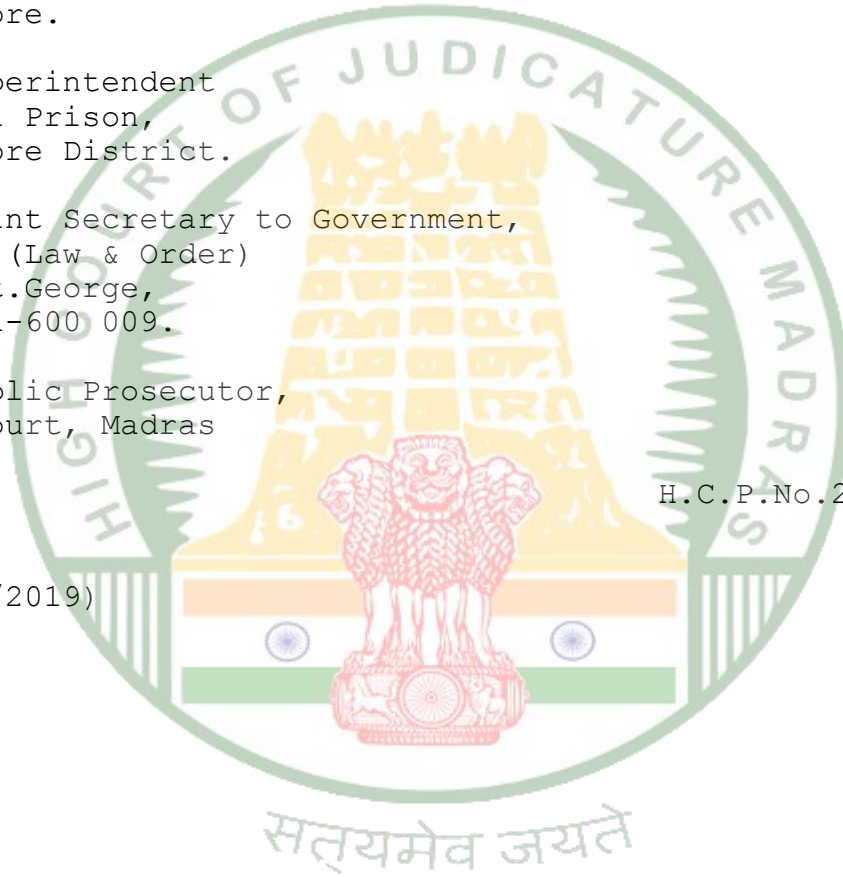
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To

- 1.The Secretary to Government
Department of Prohibition and Excise (Home)
Fort St.George,
Chennai-600 009.
- 2.The District Collector,
and District Magistrate,
Cuddalore District,
Cuddalore.
3. The Superintendent
Central Prison,
Cuddalore District.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George,
Chennai-600 009.
5. The Public Prosecutor,
High Court, Madras

H.C.P.No.2984 of 2018

GJ II(CO)
GMY (23/05/2019)



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