



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.07.2019
CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.174 of 2019

Sarathkumar @ Sarath

... Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Home, Prohibition, Excise Department,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison, Madurai.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the respondent No.2 in B.C.D.F.G.I.S.S.V.No.06/2019, dated 31.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Sarathkumar @ Sarath, son of Eswaran, aged about 27 years, now confined at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

The detenu himself is the petitioner herein and challenging the legality of the impugned order of detention dated 31.01.2019 passed by the second respondent, in and by which, the 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 of 1982), came forward to file the present habeas corpus petition.



2.A perusal of the grounds of detention would disclose that the detention order came to be passed, based on a solitary case registered by Karuppayurani Police Station in Crime No.186 of 2018, for the commission of offence under Sections 147, 148 and 302 IPC. According to the defacto complainant namely Nagendiran, a resident of Sethupathi Nagar, Panangadi, Madurai, he became aware of the cock fight programme and therefore, he and his younger brother went in a two wheeler and while they were returning, some persons came in a dark green colour car and intercepted them and a white car also dashed against the two wheeler of Aravind and he had fallen down and seven persons had stepped down and indiscriminately attacked him and as a consequence, he died on the spot.

3.The detenu and other co-accused were arrested on 08.11.2018 and their confession statements were recorded and as per the admissible portion of the confession statements, some incriminating articles were seized. The detenu and other other co-accused were produced before the Court of Judicial Magistrate No.II, Madurai and were ordered to be remanded to judicial custody till 07.12.2018 and the remand was periodically extended till 01.02.2019. 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 Goondas 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 Habeas Corpus Petition is filed.

4.The learned counsel for the petitioner would submit that for revoking the order of detention, the detenu submitted post dated representations dated 04.02.2019 and the Deputy Secretary to Home, Prohibition and Excise Department, has dealt with the same on 19.02.2019 and the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 30.04.2019 and there was a delay of 68 days and even by excluding 22 intervening holidays, still there was a delay of 46 days in dealing with and considering the said representation and when no proper explanation has been given, the said delay is fatal for the reason that the valuable rights of the detenu guaranteed under Article 22(5) of the Constitution of India, have been affected and therefore, prays for quashment of the impugned order of detention.

5.Per contra, Mr.K.Dinesh Babu, 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 facts and circumstances of the case, the delay is very minimal and therefore, it is not fatal to the impugned order of detention. He also drawn the attention of this Court to the counter affidavit and prays for dismissal of this



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, a perusal of the performa, would disclose that the Deputy Secretary to Home, Prohibition and Excise Department dealt with the representation on 19.02.2019 and the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 30.04.2019 and there was a delay of 69 days and even by excluding 22 intervening holidays, still there was a delay of 47 days in dealing with and considering the said representation and in the absence of any plausible or tenable explanation, such a delay is fatal to the order of detention 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 by setting aside the Order of Detention passed by the second respondent herein, namely, the District Collector and District Magistrate, Madurai in B.C.D.F.G.I.S.S.S.V.No.06/2019, dated 31.01.2019. Consequently, the detenu, namely, Sarathkumar @ Sarath Son of Easwaran, aged about 27 years, who is now detained at Central Prison, Madurai, 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

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Sub Assistant Registrar(CS)

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Home, Prohibition, Excise Department,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
4. The Joint Secretary to Government,
Public(Law&Order),
Port St. George,
Chennai 9



5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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