



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1532 of 2018

Subash Chandra Bose

... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Borstal School and District Prison,
Pudukottai.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the Respondent No.2 in No.50/BCDFGISSSV/2018 dated 01.10.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Subash Chandra Bose, son of Veerapathiran, aged about 19 years, now detained at Borstal School and District Prison, Pudukottai before this Hon'ble Court and set him at liberty forthwith.

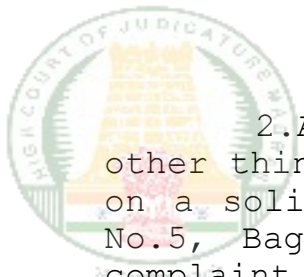
For Petitioner : Mr.R.Alagumani

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 01.10.2018 passed by the 2nd 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 14/1982), came forward to file the present habeas corpus petition.



2.A perusal of the grounds of detention would disclose among other things that the impugned order of detention came to be passed on a solitary incident. One Jothi W/o. Muniyasamy, a resident of No.5, Bagavathsingh Street, Kamarajapuram, Madurai has lodged a complaint before the B4 Keeraithurai Police Station alleging that when she and one Indirani were in Sri Meenatchi Mill Labourers Co-operative Stores Shop at Kamarajapuram, in which her husband Muniyasamy was working, more than 6 persons came there in 3 two-wheelers and among themselves, four persons, armed with deadly weapons, trespassed into the shop and attacked Muniyasamy indiscriminately and he fell down in a pool of blood. When she and Indirani raised alarm, the general public came there. The assailants threatened them with dire consequences and taking advantage of the situation they fled away. The defacto complainant's husband died on the spot on account of fatal injuries and thereafter, the defacto complainant gave a complaint to the police, which has resulted in registration of a case in Crime No.420/2018 on the file of B4 Keeraithurai Police Station, for the commission of the offences u/s.147, 148, 452, 294(b), 302, 506(ii) IPC @ 147, 148, 120-B, 452, 294(b), 302, 506(ii) IPC [ground case] and took up the case for investigation. The detenu and one Naveen Nagaraj had surrendered before the Court of Judicial Magistrate, Nilakottai on 13.06.2018 and were ordered to be remanded to Judicial Custody till 18.06.2018. Subsequently, they were taken into police custody on 19.06.2018 and thereafter they were produced before the Judicial Magistrate No.IV, Madurai for Judicial Custody on 20.06.2018 and their remand period has been extended upto 08.10.2018. 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 Habeas Corpus Petition is filed.

3. The learned counsel for the petitioner would submit that for revoking the order of detention 3 post dated representations were submitted and in respect of the third representation dated 16.10.2018 the Deputy Secretary of Home, Prohibition and Excise Department, has dealt with the same on 15.11.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 30.11.2018 and there was a delay of 14 days and even by excluding 5 intervening holidays, still there was a delay of 9 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 of the Constitution of India, has been affected and therefore, prays for quashment of the impugned orders of detention.



4. 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 petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. As rightly pointed out by the learned counsel for the petitioner, the Deputy Secretary dealt with the representation on 15.11.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise, has dealt with the same only on 30.11.2018 and there was a delay of 14 days and even by excluding 5 intervening holidays, still there was a delay of 9 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.

7. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, The Commissioner of Police, Madurai City in No.50/BCDFGISSSV/2018 dated 01.10.2018. Consequently, the detenu, namely, Subash Chandra Bose, son of Veerapathiran, aged about 19 years, who is now detained at Borstal School and District Prison, Pudukottai 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 (CS)

sj

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.



2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Borstal School and District Prison,
Pudukottai.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai 9.

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

+1CC TO MR.R.ALAGUMANI, Advocate Sr. No.66953

H.C.P(MD)No.1532 of 2018
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MA(CO)
TR (11.06.2019) 4P 7C