



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2019

CORAM:

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

H.C.P(MD)No.1806 of 2018

Vishalatchi

... Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
O/o.The District Magistrate and District Collector,
Karur District,
Karur.
- 3.The Superintendent of Prison,
Central Prison,
Trichy.
- 4.The Inspector of Police,
Kulithalai Police Station,
Karur District.

... 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 in CrI.M.P.No.09/2018 dated 30.11.2018 on the file of the Respondent No.2 and quash the same and direct the Respondents to produce the body or person of the Petitioner's Son namely Shankar @ Vettu Shankar, S/o. Selvaraj, aged 29 years now confined at Central Prison, Trichy, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner

: Mr.S.A.S.Alaudeen

<https://hcservices.ecourts.gov.in/hcservices>

For Respondents

: Mr.K.Dinesh Babu
Additional Public Prosecutor

**ORDER**

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

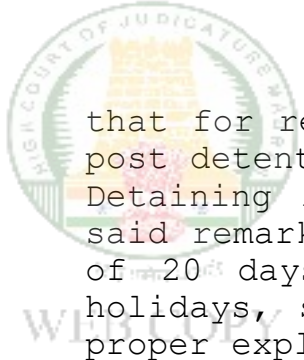
The petitioner is mother of the detenu and challenging the legality of the impugned order of detention dated 30.11.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a Goonda under the provisions of section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot 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 dated 30.11.2018, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Shankar @ Vettu Shankar came to the adverse notice in the following two cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Lalapettai Police Station Cr.No.63 of 2017	380 I.P.C.
2.	Lalapettai Police Station Cr.No.276 of 2018	294(b) and 307 I.P.C.

It is further stated in the grounds of detention that based on the complaint given by the defacto complainant, viz., Pradeep, a resident of South Manathattai, Kulithalai, Karur District the case in Crime No.561 of 2018 was registered by Kulithalai Police Station for the commission of offence under Section 397 and 506(ii) I.P.C. and in the complaint, it is stated among other things that on 11.11.2018 at about 08.30 hours, when the defacto complainant was standing near the bus stop, the detenu approached and threatened him to handover the entire money and when he refused, the detenu brandished a knife and forcibly taken a sum of Rs.500/- and in that process, he tried to stab him on his chest. Upon hearing the alarm, when the adjacent general public came and gathered, they were threatened with dire consequences and taking advantage of the situation, the detenu fled away with the money and weapon. In pursuant to the registration of the F.I.R. in Crime No.561/2018 (ground case), the detenu was arrested on 11.11.2018 and was produced before the Court of Judicial Magistrate No.II, Kulithalai and ordered to be remanded in judicial custody and the period of remand has been extended upto to 23.11.2018. The Detaining Authority on being satisfied that the activities of the detenu were prejudicial to the maintenance of the public peace and order, 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 appearing on behalf of the detenu has drawn the attention of this Court to the proforma and would submit



that for revoking the order of detention passed against the detenu, post detention representation dated 18.12.2018 was submitted and the Detaining Authority called for the remarks on 21.12.2018 and the said remarks were received only on 11.01.2019 and there was a delay of 20 days in between those days and even excluding 14 public holidays, still there was a delay of 7 days and in the absence of proper explanation, the said delay is fatal to the impugned order of detention and therefore, prays for appropriate orders.

4. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State by drawing attention of this Court to the proforma would submit that the delay cannot be construed as fatal to the impugned order of detention and would further add that the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and prays for dismissal of this petition.

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

6. A perusal of the proforma would disclose that despite the remarks were called for by the detaining authority as early as on 21.12.2018, the same was received on 11.01.2019 and there was a delay of 20 days in between those days and even excluding 14 public holidays, still there was a delay of 7 days in sending the remarks 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(5) of the Constitution of India and hence on the sole ground, it warrants interference.

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 District Collector, Karur District in Cr.M.P.No.07/2018 dated 30.11.2018. Consequently, the detenu, namely, Shankar @ Vettu Shankar, son of Selvaraj, aged about 29 years, who is now detained at Central Prison, Tiruchirappalli 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 (W)

/ True Copy /

Sub Assistant Registrar (CS-)



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3. The Superintendent of Prison,
Central Prison,
Trichy.
4. The Inspector of Police,
Kulithalai Police Station,
Karur District.
5. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort. St. George, Chennai - 9.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No. 1806 of 2018
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