

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.90 of 2020

Jamuna

... Petitioner

Vs

1.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi – 110 001.

2.The Lieutenant Governor,
Rajnivas, Puducherry.

3.The District Magistrate-cum-Authorised Officer,
Office of the District Magistrate,
1st Floor, Vazhadvavoor Road,
Kavundanpalayam,
Puducherry – 605 009.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records relating to the detention order in No.7/DM/RO/D2/PPASAA/2019, dated 05.11.2019 passed by the 3rd respondent under the Puducherry Prevention of Anti-Social Activities Act, 2008

(Act 10 of 2010) and set aside the same and direct the respondent to produce the petitioner's husband Jana @ Janarthanan S/o.Abimannan aged about 30 years the detenu, now confined in Central Prison, Kalapet, Puducherry before this Court and set the petitioner's husband Jana @ Janarthanan S/o.Abimannan aged about 30 years the detenu herein at liberty.

For Petitioner : Mr.Yuvaraj.

For Respondents : Mr.S.S.Pajaniradja for R1.
Central Government Standing Counsel.

Mr.Bharatha Chakravarthy for R2 & R3,
Public Prosecutor (Puducherry).

ORDER

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.This Petition has been filed by the Wife of the Detenu against the detention order passed against her husband on 05.11.2019 in No.7/DM/RO/D2/PPASAA/2019 as he has got about 19 cases pending registered against him for various offences. Out of the 19 cases, one case was registered for the Offence under Section 302 of Indian Penal Code, one case was registered for the Offence under Section 307 of Indian Penal Code, three cases for the offence of dacoity and one case registered under NDPS Act and so on. Taking note of the

above facts, this Court questioned the respondent as to why investigation has not been properly done and charge sheets are not filed even for the case pending from the year 2009 and directed, by Order dated 29.07.2020, to file a report regarding the stages of investigation in the cases registered against the detenu as well as the details of pending trial cases.

3.Counter affidavit and a report has been filed on behalf of respondents 2 & 3 giving the details of the stages of the cases pending against the detenu. Out of the 19 cases, in one case alone in S.C.No.43 of 2016, the detenu has been acquitted and the other cases are pending.

4.It is evident from media reports that criminal elements in Puducherry have close connection and support of political parties. Political parties are having criminals as their members and also office bearers. It is brought to the notice of this Court that many cases are relating to inter-gang rivalries and country made bombs are used to murder the opposite gang members. Totally in 5 cases, country made bombs were hurled by the detenu and his associates. Only in two cases, charge sheets have been filed in Crime No. 95/2015 dated 15.06.2015 on the file of Odiansalai Police Station and in Crime No. 98/2019 on the file of Thirubuvanai Police Station in which offences under the Explosives Substances Act, 1908, have

been invoked. So far, no charge sheet has been filed in Crime No. 98/2019 wherein double barrel country made gun was used. The detenu and his associates are said to have used country made bombs for murdering one Velazhagan S/o.Iyyavu on 19.04.2017 and a case has been registered in Crime No.40 of 2017 under Section 302 of Indian Penal Code and 3 of Explosive Substances Act, 1908 and thereafter, the case was transferred to CBCID, Puducherry. Though the case has been registered in the year 2017, the sanction for prosecution under Explosives Substances Act has not been granted by the Government. Only after this Court questioned the attitude of the Respondents by virtue of the order dated 29.07.2020, sanction has been granted last week and charge sheet has also been filed in the said case, Mr.Bharatha Chakravarthy, learned Public Prosecutor would submit. This Court is justified to observe that three years delay in granting sanction for the case registered in the year 2017 is only due to political support enjoyed by the accused. In 2015 case, not even investigation is over for the past 5 years. This would speak about his clout with political parties, especially ruling parties and Police. But for political interference, Police would have filed charge sheets.

5.This would only go to show the lethargic attitude of the police even in the cases involving heinous criminals that too murders by using country made bombs. Many murders are committed cruelly by throwing country made bombs. In three

cases registered against the detenu, the detenu and other accused had used country made bombs for committing murders. In 2018, Former Speaker of Puducherry, Sivakumar was murdered by a gang in the same fashion, by hurling country bombs. It is reported in media that even some of the Ministers and Legislators are being given security by rowdy gangs.

6.It is submitted by Mr. Bharatha Chakravarthy that in most of the cases, accused would be more than ten persons and they will not co-operate with trial and cases are pending because of the Non-Bailable Warrant issued against the accused. Since the cases are pending for a long time, the Courts are compelled to split up the matters and thereafter, conduct trials. This has to be taken into consideration by the lower Courts while granting bail, as the accused violate the bail conditions.

7.It is appearing in the Media that rowdy gangs are operated by many politicians, communal and religious leaders throughout the Country. There seems to be a syndicate between the police force, political leaders and rowdy gangs and hence, the safety and security of the people are jeopardised.

8.Further, it is reported that persons with criminal background are becoming policy makers in many parts of the country and the same has to be prevented and the

system has to be cleansed. This is possible, only if the top leaders of our political parties are firm in not admitting the criminals in their political parties. The leaders should have a vision for decriminalization of politics. If criminals are accommodated in political parties and given tickets to contest elections and elected as M.L.A.s, M.P.s, and made as Ministers, wrong message would be sent to the people.

9. Persons with criminal background should not become policy makers. Association for Democratic Reforms (ADR) released a report “Lok Sabha Elections 2019 - Analysis of Background, Financial, Education, Gender and other details of the winners” and it revealed that 43% (233 out of 539) elected M.P.s have declared their criminal cases. Out of that, 29% (159 M.P.s) have serious criminal cases pending against them. Therefore, the Central Government has to come out with a comprehensive legislation to prohibit persons with criminal background from contesting elections to Parliament, State Legislatures and local bodies as observed by the Constitution Bench of Hon'ble Supreme Court in ***Public Interest Foundation and others vs. Union of India and another*** on 25th September 2018.

Para 119 of the above Judgment is extracted as follows:-

“119. We are sure, the law making wing of the democracy of this country will take it upon itself to cure the malignancy. We say so as

such a malignancy is not incurable. It only depends upon the time and stage when one starts treating it; the sooner the better, before it becomes fatal to democracy. Thus, we part.”

Indian Democracy should not be tainted by criminals. Further, it is seen that some of the criminal elements are floating political parties on their own with the support of their religion or communities and the same is required to be prohibited.

10.In view of the above, this Court, *Suo Motu*, impleads, **“The Director General of Police, Puducherry.”**, as party respondents to the proceedings and Mr.Bharatha Chakravarthy, learned Public Prosecutor (Puducherry) takes notice on behalf of the newly impleaded 4th respondent. Mr.G.Karthikeyan, learned Assistant Solicitor General, assisted by Mr.S.S.Pajaniradja, Central Government Standing Counsel appearing on behalf of the first respondent shall answer the following queries:

(i)How many rowdy gangs are active in Puducherry as well as in other States?

(ii)How many persons with criminal background are accommodated by various political parties as top office bearers and District Secretaries and the details of the criminal cases registered against those persons and their position in the respective political party?

(iii)How many History sheets have been opened for the past ten years in Puducherry?

(iv)How many murders have been committed by Rowdy Gangs in Puducherry as well as in other states?

(v)How many cases have been registered so far against the rowdies and what are all the stages of the said cases in Puducherry?

(vi)Whether witnesses in the said cases are threatened to turn hostile so as to get acquittal in Puducherry?

(vii)How many years it takes for a criminal case, especially a murder case to get disposed of in Puducherry?

(viii)How many persons have been so far detained under the Goondas Act for the past ten years in Puducherry? (Each year detail to be given)

(ix)Whether Rowdy gangs are using illegal arms like Pistols etc., apart from using Explosive Substances?

(x)If so, in how many cases, the illegal weapons have been used?

(xi)Why not the Central Government enact a law to prohibit candidates with criminal background contesting the elections to the Parliament as well as State legislatures as suggested by the Constitution Bench of the Hon'ble Supreme Court on 25.09.2018 in *Public Interest Foundastion and others vs. Union of India and another* reported in 2019 (3) SCC 224?

(xii) Why not the Puducherry Government enact a law like Maharashtra Control of Organized Crime Act, 1999 to control the criminal activities in Puducherry?

11. Post the matter after two weeks.

(N.K.K.,J.) (V.M.V.,J.)
13.08.2020