

**Vathsala Vs. the Secretary to Government, State of Tamil Nadu, Home Prohibition and Excise Department and the Commissioner of Police**

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**SooperKanoon Citation :** [sooperkanoon.com/777064](http://sooperkanoon.com/777064)

**Court :** Chennai

**Decided On :** Jan-06-2009

**Reported in :** 2009CriLJ1247

**Judge :** Elipe Dharma Rao and ;S. Tamilvanan, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 109, 120, 147, 148, 149, 302, 323, 324, 341, 385, 397, 399 and 506; [Constitution of India](#) - Article 226

**Appeal No. :** H.C.P. No. 1622 of 2008

**Appellant :** Vathsala

**Respondent :** The Secretary to Government, State of Tamil Nadu, Home Prohibition and Excise Department and the Com

**Advocate for Def. :** N.R. Elango, Addl. Public Prosecutor

**Advocate for Pet/Ap. :** S. Swamidoss Manokaran, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**S. Tamilvanan, J.**

1. This Habeas Corpus petition has been filed under Article 226 of the [Constitution of India](#) by the petitioner challenging the order of detention, dated 25.07.2008 passed by the Commissioner of Police/detaining authority, Chennai City, who is the second respondent herein. The petitioner herein is the mother of the detenu, who was detained as 'Goonda' under Tamil Nadu Act 14 of 1982.

2. As per the impugned order, there are four adverse cases registered against the detenu. The first case in Crime.No.545 of 2006 on the file of the N.1 Royapuram Police Station which was registered under Section 399 IPC, on the alleged occurrence that had taken place on 06.04.2006. The second case in Crime No. 28 of 2007 on the file of N.4 Fishing Harbour Police Station which was registered under Sections 341, 323, 324 and 506(ii) IPC. The third adverse case in Crime No. 320 of 2007 was registered under Sections 147, 148, 341, 506(ii), 302 IPC r/w 149, 109 and 120(b) IPC on the file of M.2 Madhavaram Police Station. The fourth adverse case was registered in Crime No. 156 of 2008 on the file of the N.2 Kasimedu Police Station under Sections 341, 323, 385, 397 and 506(ii) IPC.

3. As per the ground case, on 09.07.2008 at about 9.00p.m., the petitioner along with the other accused came in a motor cycle, wrongfully restraining one Chinniyan at Pudhumanaikuppam First street near Boodha Kaliyamman Koil and beat him with hands and legs and at the point of knife threatened to murder him. On account of the same, the said Chinniyan lodged a complaint. Based on the said complaint, a case in N.2 Kasimedu Police station, Crime No. 171 of 2008 under Sections 341, 323 and 506(ii) IPC was registered. On 12.07.2008 at about 10.30hrs, while the said Chinniyan was returning from his house to Tondiarpet market, on the way, at the junction of Kummalammal Koil Street and Thandavarayan Street, the detenu and two other accused came in a motor cycle, wrongfully restrained the said Chinniyan and caused bleeding injuries, by using knife, over the back side of his neck and also threatened the public by picking up cool drink bottles and hurled the same against the public.

4. According to the petitioner, her son the detenu is an un-married person studied only upto 5th standard in a Corporation School and working as a fisherman and

also doing work as lorry cleaner for daily wages to support his family. According to the petitioner, on 10.07.2008 when the detenu went to the Magistrate's Court, Thiruvallur to attend a case, he was forcibly taken to the police station and the case was foisted against him. Though in the grounds of detention, it is stated that the representation of the petitioner dated 16.07.2008 was considered by the detaining authority, no documents relating to the same are available in the booklet supplied to the detenu.

5. Mr. S. Swamidoss Manokaran, learned Counsel appearing for the petitioner submitted that there is no valid remand on the date of detention order. The remand extension order said to have been passed on 27.08.2008 is a vital document, however, the copy of the same was not served on the detenu, which vitiates the detention order. Learned Counsel further contended that there were no such activities by the detenu, which are prejudicial to the maintenance of public order and therefore, the detention order is totally unwarranted. The first case registered in Crime No. 547 of 2006 under Section 399 IPC ended in acquittal by the V Fast Track Court, Chennai. Though the detenu made a representation on 30.09.2008 to the first respondent, the same was not considered. According to the learned Counsel for the petitioner, the ground case has been foisted against the detenu, in order to detain him under the Tamil Nadu Act 14 of 1982. Learned Counsel further submitted that as per the judgment rendered in T.M. Syed Ali and Anr. v. State of Tamil Nadu rep. by its Chief Secretary, Fort St. George, Chennai-9 and five Ors. reported in : 1999(2)CTC490 as the representation made on behalf of the detenu prior to the order of detention, though considered by the detaining authority, was not placed before the advisory Board or before the State Government, such non-consideration of the Advisory Board or the State Government will have the effect of vitiating the order of pre-detention. The learned Counsel also relied on a Division Bench decision of this Court in M. Venda v. The State of Tamil Nadu, rep. By its Secretary to Government, Prohibition and Excise Department, Chennai and Anr. reported in 2004 M.L.J. (CrI.) 769, wherein the Court allowed the Habeas Corpus Petition and set aside the order of detention.

6. In the instant case, as per the order dated 31.10.2008, Joint Secretary to the Government of Tamil Nadu has intimated that the representation of the detenu

dated 16.07.2008 was considered. It was intimated earlier to the petitioner that her son was arrested for the offences committed and he was remanded according to law. The copies of all the relied on documents were furnished to him and as submitted by the learned Additional Public Prosecutor, it is seen that the order was also passed according to law and we could find no mandatory violations in the detention order. Therefore, the decision cited by the learned Counsel appearing for the petitioner is not applicable to the facts and circumstances of the instant case.

7. A copy of the accident register available at Page 100 of the typed set shows that the defacto complainant was sent to hospital on 12.07.2008 at 11.30a.m. and the Doctor found various bleeding injuries as stated below:

i) cut injury 10 X 1/4 X 1/4 in right fore arm

ii) Injury 10 X 1/4 X 1/4 left back

8. As stated by the detaining authority, it is seen that sufficient supporting materials have been placed before the detaining authority, for having subjective satisfaction while passing the order of detention. It is not in dispute that copies of all the relied on documents and the translated copies in Tamil, language known to the detenu, were furnished to him.

9. On perusal of the impugned order and the materials available on record, we are of the view that there is no delay in passing the order. On the date of the detention order, there is a valid remand and the copy of the same was also furnished to the detenu. Hence, we are of the considered view that in the order of detention, there is no illegality or irregularity leading to miscarriage of justice, so as to warrant this Court to interfere with the impugned order, passed by the detaining authority.

10. Under such circumstances, this Habeas Corpus Petition fails and the same is liable to be dismissed. Accordingly, this petition is dismissed.