IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

H.C.P.No.1131 of 2017

Thirumurugan .. Petitioner

Vs

1. State rep. by
Commissioner of Police
Greater Chennai,
Chennai.

2. Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

3. The Superintendent of Police
Central Prison,
Puzhal, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records relating to the petitioner under Tamil Nadu Act 14 of 1982 in connection with the order of detention passed by the first respondent dated 28.05.2017 in BCDFGISSSV No.311/2017 against the detenu Thirumurugan, S/o. Gandhi, aged about 42 years, who is confined at Central Prison, Puzhal and set aside the same,

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consequently direct the respondents to produce the body of the detenu before this Court and set him at liberty.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Ms.Aruna Elango

For Respondents : Mr.V.ijay Narayan
Advocate General
assisted by
Mr.V.M.R.Rajentran
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.KALAIYARASAN, J.]

This Habeas Corpus Petition has been filed seeking to quash the detention order passed by the first respondent dated 28.05.2017 in BCDFGISSSV No.311/2017 against the detenu Thirumurugan, aged about 42 years, s/o. Gandhi, No.66, Brindavanam Extension Road, Mambalam, Chennai - 600 017.

2. It is averred in the petition that Inspector of Police, Law and Order D5 Marina Police Station as sponsoring authority filed an affidavit before the Detaining Authority alleging that the detenu involved in the following adverse cases

i. E.2 Royapettah Police Station Crime No. 1095/2015 registered under Sections 188, 143 and 285 IPC

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ii. F.2 Egmore Police Station, Crime No.1577 / 2015 registered under Sections 143 and 188 IPC.

iii. J.1 Saidapet Police Station, Crime No.745/2016, registered under Sections 143 and 188 IPC.

iv. F.3 Nungambakkam Police Station, Crime No.1432/2016, registered under Sections 143 and 188 IPC.

v. E.3 Teynampet Police Station Crime No.1125/2016 registered under Sections 506 (ii) IPC r/w Section 3 of TNPPDL Act.

3. Further, it is averred that D5 Sub-Inspector of Police, Marina Police Station lodged a Special Report wherein it is alleged that marina beach zone area was already not permitted to conduct public meeting, demonstrations and other functions and in spite of elaborate bandhobust arrangement based on the security arrangement on 21.05.2017 at 6 p.m, the detenu and others under the leadership of Thirumurugan, Chief Co-ordinator, May-17 movement wrongfully assembled near Nethaji statue, marina beach and raised slogans in support of srilankan tamils and also banned LTTE movement violating the orders of the police. They also caused disturbance to the normal traffic. Thirumurugan asked his party members to damage the police vehicle and buses and argued with the police personnels. Though some of them including Thirumurugan were secured and kept in a MTC bus bearing Registration No.TN 01 N 7515, they pushed the police personnel and rushed near the step

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of the bus and damaged glasses of the bus with stick and portraits. On the report given by the Sub-Inspector, a case was registered in D5 Marina Police Station in Cr.No.480 of 2017 under Sections 147, 148, 188, 341 and 506 (ii) IPC r/w 7 (1) (a) of CLA Act and Section 3 of TNPPDL Act.

4. The Detaining Authority after considering the materials placed before him derived subjective satisfaction that there is always possibility of the above protest becoming violence and posing serious threat and passed the detention order.

5. The first respondent in his counter contends that the detaining authority, after analysing the materials and facts placed before him by the sponsoring authority derived subjective satisfaction and passed the detention order and the same does not require any interference.

6. The learned Senior counsel appearing for the petitioner repletely argued the following points :

(i) Before presenting the representation by the detenu within the stipulated time, the detaining authority in an interview stated that the detention order passed by him is just and proper and it amounts to pre-determination of mind regarding the representation.

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(ii) The offences alleged to have committed by the detenu is not prejudicial to the maintenance of the public order as per Section 2 (f) of Tamil Nadu Act 14 of 1982.

(iii) Tamil version does not convey the correct context of the detention order in page 7 and procedure has not been followed. There is discrepancy of the date of remand between the remand report and remand order and therefore, the detaining authority has not applied his mind and the representations given by the petitioner were not disposed of without delay.

7. The learned Advocate General appearing for the respondents per contra contends that the grounds agitated by the petitioner are baseless and contrary to the facts and the reports given by the petitioner were also disposed of without any delay.

8. The detaining authority namely the first respondent passed the detention order against the detenu on 28.05.2017 and the same was received by the detenu on 29.05.2017. The petitioner can give his representation within 12 days from that date. As per Section 8 of Act 14 of 1982, representation is to be given to the State Government and the first respondent has nothing to do with the representation. Therefore before

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presenting the representation to the Government, justifying the detention order in his interview will no way be prejudicial to the detenu. Since the representation is dealt with by the Government and not by the first respondent, predetermination of mind in disposal of the representation does not arise. Therefore the first ground of the petitioner is not sustainable.

9. The contention that the offences alleged to have committed does not attract that the detenu acted in a manner prejudicial to the maintenance of the public order as per Section 2 (f) of Act 14 of 1982 is also not acceptable. The learned Advocate General cited the Supreme Court Judgment in **Masood Alam v. Union of India**, reported in **(1973) 1 SCC 551** and contends that if the grounds are relevant and germane to the object of the act then merely because the objectionable activities covered thereby also attract the provisions of Chapter VIII of Cr.P.C. In this Judgment, it has been held as follows :

> "This contention ignores para 3 of the grounds in which it is clearly stated that the District Magistrate was satisfied that the petitioner was likely to act in a manner prejudicial to the security of India, security of the State and maintenance of public order and that with a view to preventing him from so acting, it was necessary to detain him. The

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submission that the use of the word "likely" in this para only brings the petitioner's case within the purview of the provisions of Chapter VIII (Security Proceedings) of the Criminal Procedure Code thereby justifying only proceedings under Section 107 of the Code and that an order of detention in such circumstances is an abuse and misuse of the provisions of the Act has only to be stated to be rejected. If the grounds are relevant and germane to the object of the Act then merely because the objectionable activities covered thereby also attract the provisions of Chapter VIII CrPC the preventive detention cannot for that reason alone be considered to be mala fide provided the authority concerned is satisfied of the necessity of the detention as contemplated by the Act: see *Sahib Singh Duggal* v. *Union of India* [AIR 1966 SC 340 : (1966) 1 SCR 313 : (1966) 1 SCJ 321] , *Mohammad Salem Khan* v. *C.C. Bose* [AIR 1972 SC 1760 : (1972) 2 SCC 607] and *Borjahan Gorey* v. *State of West Bengal* [(1972) 2 SCC 550 : AIR 1972 SC 2256] . The jurisdiction of preventive detention sometimes described as jurisdiction of suspicion depends on subjective satisfaction of the detaining authority. It is designed to prevent the mischief from being committed by depriving its suspected author of the necessary facility for carrying out his

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nefarious purpose."

In this case also, the detaining authority in the grounds of detention order has clearly stated that there is always possibility of these protests becoming violent and posing serious threat to the sensitive establishments. That apart the offences committed by the detenu comes well within definition of Goonda as defined under Section 2(f) of Act of 14 of 1982.

10. This Court perused the Tamil version as well as the English version of page 7 of the grounds of detention order and tamil version conveys only the same context as in English version and there is also no deviation from the procedure in passing the detention order. As far as the discrepancy of the date of remand, the detenu was arrested at 6 p.m on 21.05.2017 and he was produced before Judicial Magistrate and remanded to judicial custody at 1.50 a.m on 22.05.2017. Therefore, date changes at the time of remand and there is no discrepancy. Therefore, all the above contentions of the petitioner do not hold good.

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11. As far as delay is concerned, the respondents filed the proforma. It is seen that the detenu gave eleven representations and all the representations were disposed of by the Government with delay. As per the

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proforma, with respect to the first representation, in between column No.7 and 9, 4 clear working days are available and in between column Nos. 12 and 13, 2 clear working days are available. With respect to the second representation, in between column Nos.7 and 9, 5 clear working days are available and in between column Nos.12 and 13, 2 clear working days are available. With respect to the third representation, in between column Nos.7 and 9, 4 clear working days are available and in between column Nos.12 and 13, 2 clear working days are available. With respect to the fourth representation, in between column Nos.7 and 9, 2 clear working days are available. With respect to the fifth representation, in between column Nos.7 and 9, 2 clear working days are available. With respect to the sixth representation, in between column Nos.7 and 9 13 clear working days are available. With respect to the seventh representation, in between column Nos.12 and 13, 13 clear working days are available. With respect to the eighth representation, in between column Nos.7 and 9, 3 clear working days are available. With respect to the ninth representation, in between column Nos.7 and 9, 3 clear working days are available and in between column Nos.12 and 13, 2 clear working days are available. With respect to the tenth representation, in between column Nos.7 and 9, 1 clear working day is available. Likewise, in respect of eleventh representation, in between column Nos. 7 and 9, 1 clear working day is available. All the representations given by

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the detenu were not disposed of within the stipulated time and there is delay in disposal of every representation. It shows the total inaction on the part of the concerned authorities. Such delay in disposal of the representations affects the right of the detenu guaranteed under Article 22 (5) of the Constitution of India. Therefore, on this ground alone, this Court is of the considered view that the detention order is liable to be quashed.

12. In fine, this petition is allowed. The Detention Order dated 28.05.2017 passed in BCDFGISSSV No.311/2017 by the Detaining Authority against the detenu by name, Thirumurugan, aged about 42 years, S/o. Gandhi, No.66, Brindavanam Extension Road, Mambalam, Chennai - 600 017 is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

[A.S., J.] [P.K., J.]
19.09.2017

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To

1. The Commissioner of Police
   Greater Chennai,
   Chennai.

2. The Secretary to Government
   Home, Prohibition and Excise Department,
   Fort St. George,
   Chennai - 600 009.

3. The Joint Secretary
   Public Law and Order,
   Fort St. George,
   Chennai - 600 009.

4. The Superintendent of Police
   Central Prison,
   Puzhal, Chennai.
[in duplicate for communication to the detenu]

5. The Public Prosecutor,
   High Court, Madras.

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A.SELVAM, J.
and
P.KALAIYARASAN, J.

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Pre-Delivery Order in
H.C.P.No.1131 of 2017

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