

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE NOOTY.RAMAMOHANA RAO  
AND  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

Habeas Corpus Petition No.2227 of 2016

Manoj @ Molu Mukkiya

.. Petitioner

Vs.

1. Government of Tamil Nadu  
Rep. By its Secretary  
Home, Prohibition and  
Excise (XVI) Department  
Fort St.George  
Chennai-600 009

2. The Commissioner of Police  
Greater Chennai  
Chennai City Police  
Vepery, Chennai-600 007

... Respondents

Petition filed under Article 226 of the Constitution of India, calling for the records in the detention order vide BCDFGISSSV No.1054 of 2016 dated 19.09.2016 on the file of the 2<sup>nd</sup> respondent and quash the same and direct the respondents herein to produce the body of Thiru. Manoj @ Molu Mukkiya, Male, aged 30 years , S/o.Sonai Mukkiya, the detenu now confined in Central Prison-II, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Jugal Kumar  
For Respondents : Mr.V.M.R.Rajentren,  
Addl. Public Prosecutor.

ORDER

(Order of the Court was made by  
NOOTY.RAMAMOHANA RAO. J.)

This Habeas Corpus Writ Petition is directed against the detention order dated 19.09.2016 passed by the Commissioner of Police, Greater Chennai, detaining one Manoj @ Molu Mukkiya,

S/o.Sonaimukkiya, Peerol Village, Bantot Police Station, Madhubani District of State of Bihar.

2. The Detaining Authority is satisfied that the aforesaid individual answers the expression 'Goonda' as defined in Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, 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 of 1982) [for short "Act" henceforth]. The grounds of detention were also drawn on the same day.

3. It appears one Ashok Dugar, S/o.Fathechand, residing at No.30, Thanikachalam Road, T.Nagar, Chennai, lodged a complaint with Mambalam Police Station on 29th of April 2016, complaining of burglary of his house in his absence in the intervening night of 28th and 29<sup>th</sup> of April 2016. Accordingly Crime No.5 of 2016 registered and investigation is taken up and it is during the course of said investigation, the detenu was arrested on 5th of June 2016, at Usarar Village within the limits of Ruthrapur Police Station, Bihar. He was produced before the Additional Chief Judicial Magistrate, Jhanjharpur, Madhubani District, Bihar, on 06.06.2016 and upon obtaining Transit Warrant, he was produced before XVII Metropolitan Magistrate, Saidapet, Chennai, on 12th June 2016, who initially remanded him to judicial custody till 24th of June 2016 and accordingly he came to be lodged in Central Prison, Puzhal, Chennai.

4. It is also brought to the notice of the Detaining Authority that the remand period was extended from time to time upto 27th of September 2016. It is in that backdrop, the present impugned detention order came to be passed on 19<sup>th</sup> of September 2016.

5. Several grounds have been raised against the order of detention including that involvement in one single and solitary offence of burglary could not have caused panic or fear in the society and it would not also have impacted the confidence and morale of the society and that there is no proper appreciation of material placed before the competent authority before passing the impugned order of detention.

6. Since we are aware that involvement in a solitary offence could be a substantive ground for preventive detention as even a solitary instance is capable of impacting and tilting the equilibrium of the society; but however we are now concerned with the procedural safety norms, Whether have been fully met with in this case or not. We are conscious that preventive detention under Section 3 of the Act can be pressed by the competent authority upon being satisfied about such a necessity. The said satisfaction is purely subjective satisfaction but not

an objective one. Therefore, sufficiency or adequacy of the material which would form the basis for detention is not a factor to be taken into account or consideration while judicially reviewing the order of preventive detention. We are also conscious that it is the act of the detenu which has an effect on the delicate balance of law and order situation that was required to be maintained in the society, which normally accords an opportunity to the competent authority to exercise power available to him under Section 3 of the Act. But however the remedy against a preventive detention order, is by way of ensuring that the procedure is followed faithfully and carefully and an expeditious opportunity to make an effective representation against the detention has been made available to him as is required by Article 22(5) of the Constitution or not.

7. In the instant case, there is no dispute in the fact that the detenu is not a normal resident of Chennai City. But he is the resident of State of Bihar. It is also not in dispute that he is not familiar in reading, writing and understanding either English or Tamil languages. The order of detention and the grounds of detention have been drawn in English and Tamil languages. Upon the detenu been lodged in Central Prison, it appears a Grade-I Police Constable by name S.Kumaravel, attached to Mambalam Police Station, has been assigned the task of explaining the material relied upon and considered by the Detaining Authority, in the language known to the detenu. Accordingly, Mr.Kumaravel, Grade-I Police Constable appears to have visited Central Prison-II, Puzhal, Chennai, on 23rd September 2016 and seems to have explained in Hindi language to the detenu; the material looked upon and examined by the competent authority which was served on the detenu and explained their content on 23<sup>rd</sup> September 2016 at 12 noon.

8. We have, on the reverse of page 5 of the material paper Book handed over to the detenu, the following endorsement:

"Certified that the clear copy of grounds of detention contained pages (1) one to (11) Eleven pages and other Documents pages (1) one to (197) one Hundred Ninety seven pages only here

"Receivers Signature:

Dated:

Time :

and in Column Signature, "LHT at Detenu No.8572,  
Name: Manoj @ Molu Mukkiya, Date 23-09-2016, Time:  
12-00"

There is also a rubber stamp affixed saying, "Read over and explain in Hindi by me." Signature : S.Kumaravel, Gr.I.P.C.-26650, R1, Mambalam PS. Crime, T.Nagar, Chennai-17.

Thus a clear copy of the grounds of detention running to 11 pages and the material looked into by the detaining authority running to 197 pages has been supplied and their content was



explained to the detenu in person by Mr.Kumaravel on 23<sup>rd</sup> September 2016 at 12.00 noon. All the 197 pages contain the same rubber stamp entry affixed.

9. The above leaves one wondering as to whether it is possible, at all, for somebody to explain in detail the contents of all the 11 pages of grounds of detention and the contents of 197 pages of the material relied upon by the Detaining Authority at one stroke i.e., on 23.09.2016 at 12.00 noon. One can understand the explanation being carried out over certain number of hours, but that is not what the record discloses. It discloses that the contents of all those Pages were explained at 12.00 noon on that day. In our mind there is no amount of doubt left with regard to the inaccuracy of this statement recorded and consequently we are satisfied that there is no meaningful or purposeful translation of all the grounds of detention and the material considered by the Detaining Authority in Hindi language for appreciation of the detenue. The purpose of furnishing a translated copy or translating the contents to the detenue was to make him comprehend properly as to what went wrong and where. Such activity of translation is not intended to be an eyewash but is truly intended to provide a meaningful opportunity to the Detenue to put up an effective defense against his detention. It is not in dispute that the purpose of making available clear copy of the grounds of detention, the material considered by the Detaining Authority was to provide one opportunity atleast for the detenu to make an effective representation against his detention. If the opportunity to make such a representation is denied, the further detention of such a detenu becomes untenable. The detenue has got a right to make a representation against his preventive detention order inasmuch as he cannot secure any bail against preventive detention order. In those circumstances, we are convinced that the right to make an effective representation available to the writ petitioner has been successfully frustrated in the instant case. In that view of the matter, the further detention of the detenu pursuant to the order passed by the Commissioner of Police, Greater Chennai, in Proceedings No.BCDFGISSSV No.1054/2016 dated 19.09.2016 is unsustainable. Let the detenu be set free forthwith.

s/d-  
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

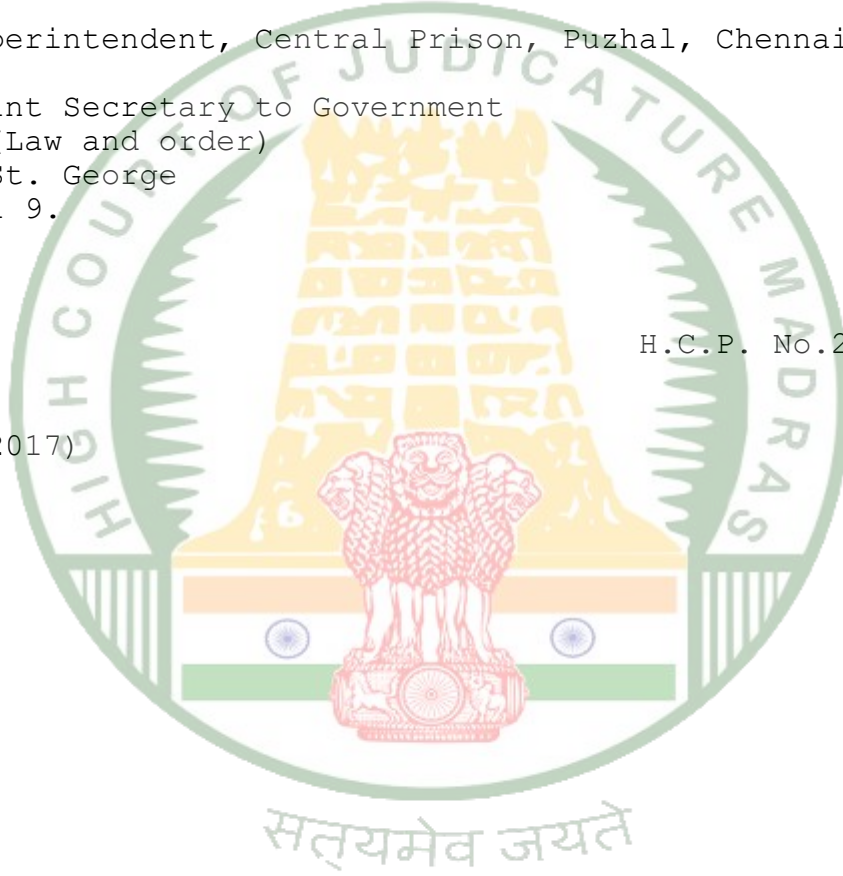
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To

1. The Secretary, Home,  
Prohibition and Excise (XVI) Department  
Fort St.George, Chennai-600 009
2. The Commissioner of Police, Greater Chennai  
Chennai City Police, Vepery, Chennai-600 007
3. The Public Prosecutor, High Court,  
Madras
4. The Superintendent, Central Prison, Puzhal, Chennai-66.
5. The Joint Secretary to Government  
Public(Law and order)  
Fort. St. George  
Chennai 9.

H.C.P. No.2227 of 2016

AK(CO)  
sp(11/08/2017)



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