

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.06.2018

CORAM

**THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM**

H.C.P. NO. 228 OF 2018

S.Gopi

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By the Secretary to Govt.
Prohibition & Excise Dept.
Fort St. George, Chennai 600 009.

2. The District Collector
Office of the District Collector
and District Magistrate
Vellore District, Vellore – 9.

3. The Superintendent of Police
Borstal School, Pudukottai. सत्यमेव जयते.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus calling for the records pertaining to the order of detention passed in Memo No.C3/D. No.123/2017 dated 20.11.2017, passed by the 2nd respondent and set aside the same and direct the respondents to produce the detenu, Vicky @ Vignesh, S/o Gopi, aged about 18 years, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. Camyles Gandhi

For Respondents : Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The second respondent clamped an order of detention on 20.11.2017 as against Vicky @ Vignesh, S/o Gopi, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the petitioner has come forward with the present habeas corpus petition.

3. Heard Mr.Camyles Gandhi, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Addl. Public Prosecutor appearing for the respondents.

4. As the detenu was averred to be around 18 years, this Court directed the respondents to produce the birth certificate of the detenu. The birth certificate of the detenu is produced before this Court, which shows that the date of birth of the detenu is 20.1.99. Even though the detenu has attained majority,

but considering the age of the detenu, this Court perused the grounds of detention. In the grounds of detention, four cases have been referred. In one of the case, which relates to robbery, the value of the property involved in the case is only Rs.1,000/-, which has not been recovered.

5. A perusal of the order of detention reveals that the detaining authority, for arriving at a subjective satisfaction to detain the detenu, in the order of detention, has stated that the detenu is likely to come out on bail and, therefore, the detenu has to be detained by invoking the preventive detention laws.

6. Filing of bail petition is a statutory right granted to the accused/detenu under the relevant provisions of the Code of Criminal Procedure. The very fact that the detenu will file bail petition and there is every likelihood of the detenu coming out on bail alone cannot be a ground for the detaining authority to pass an order of detention. The more relevant consideration for the detaining authority is to subjectively satisfy himself as to whether after release on bail, the probability or the possibility of the detenu to indulge in similar kinds of activities, which would be prejudicial to the public health and public order and only on arriving at such a subjective satisfaction, preventive detention can be ordered.

7. From a perusal of the order of detention, this Court is of the considered

view that that there is total non-application of mind on the part of the detaining authority while passing the order of detention. A copy of the Transfer Certificate has been filed before this Court which reveals that the detenu is a person, who was studying 10th standard at the time of detention. Keeping in mind the future of the detenu, who is just 19 years old, this Court directed the parents of the detenu to file an affidavit and an affidavit has been filed by the parents of the detenu, who have stated that they will ensure that the detenu will not indulge in any such prejudicial activities in future, which would be detrimental to public order.

8. Accordingly, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Vicky @ Vignesh, S/o Gopi, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case. The copy of the affidavit, filed by the parents of the detenu, is placed on record.

(S.V.J.) (S.R.T.J.)

29.06.2018

Index : Yes/No

Internet : Yes/No

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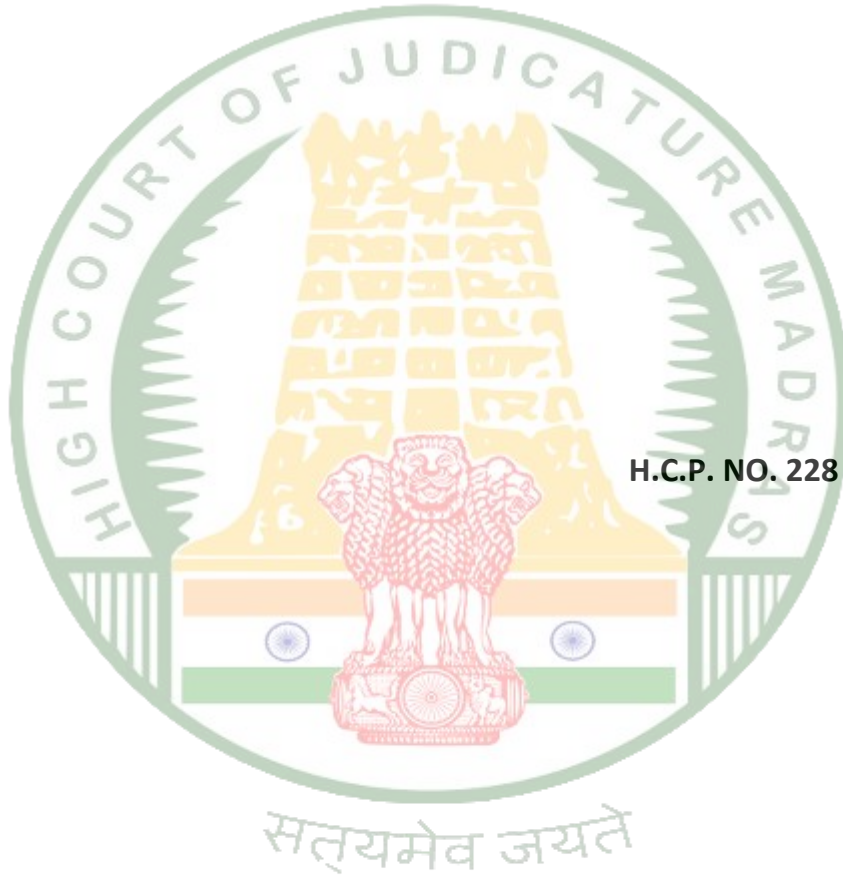
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