

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.04.2018

Coram

THE HONOURABLE **Mr. JUSTICE M.VENUGOPAL**
AND

THE HONOURABLE **Mrs. JUSTICE R.HEMALATHA**

H.C.P.No.60 of 2018

Rani

.. Petitioner

Vs.

1. State of Tamilnadu
rep. By
The Secretary to Government
Home, Prohibition Excise Department,
Fort St., George,
Chennai – 600 009

2. The Commissioner of Police,
Chennai Police, Vepery,
Chennai.

..Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Habeas Corpus to call for the records pertaining to the Order of Detention passed in No.775/BCDFGISSSV/2017 dated 15.12.2017 passed by the 2nd Respondent and set aside the same and direct the Respondents to produce the Petitioner's husband by name

Kumar @ Kilai Kumar son of Pandian aged about 25 years before this Court, now confined in Central Prison, Puzhal.

For Petitioner : Mr.S.Krishnamoorthy

For Respondents : Mr.R.Ravichandran
Government Advocate (Crl.Side)

ORDER

[Order of the Court was made by **M.VENUGOPAL, J.**]

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate (Crl.Side) for the Respondents 1 and 2.

2. The Petitioner / Wife of Detenu has preferred the instant Habeas Corpus Petition seeking to call for the records relating to the order of Detention passed in Ref.No. 775/BCDFGISSSV/2017 dated 15.12.2017 by the 2nd Respondent and to quash the same. Further, the Petitioner has sought for passing of an order by this Court in directing the Respondents to produce her husband, Kumar @ Kilai Kumar, son of Pandiyan aged about 25 years [now confined in Central Prison, Puzhal] and to set him at liberty.

3. It is to be noted that the Petitioner's husband, viz., Kumar @ Kilai Kumar is involved in four Adverse Cases, which runs as under:

Sl. no	Police Station	Crime No. and offences
01	H-8 Thiruvottiyur Police Station	Crime No.1954 of 2017 for offence under Section 379 IPC
02	H-8 Thiruvottiyur Police Station	Crime No.2039 of 2017 for offence under Section 379 IPC
03	H-8 Thiruvottiyur Police Station	Crime No.2081 of 2017 for offences under Section 379 IPC
04	H-8 Thiruvottiyur Police Station	Crime No.2111 of 2017 for offences under Section 379 IPC

4. The facts of the Ground Case are that Ms.Stephanie, aged 23 years, daughter of Taril residing at No.2/137, Kumaran Annexe Street, Periyasekkadu, MMC Plot, Chennai – 51. On 20.11.2017 at 9.00 hrs., she was proceeding to meet her relative at Apparsamy Koil Street, Thiruvottiyur. While she was proceeding near Apparsamy Koil Street and Kanakkar Street Junction, one identifiable person, aged about 25-30 years wrongfully restrained her and threatened her to handover the necklace chain from her. She refused and at that time, the accused

threatened her by using obscene language in Tamil and added further, he took out a knife from his hip and rushed to stab over her neck and she moved in the side direction and escaped from the attack. Furthermore, the accused took advantage of the situation, snatched 3 sovereigns of gold from Ms.Stephanie and also snatched hand bag containing Rs.10,000/- from her. She raised an alarm by uttering 'Thief' 'Thief' and the public, came to her rescue with a view to apprehend the accused at the spot. However, the accused after seeing the public, rushed to the nearby cool drinks shop, picked up bottles and hurled the same against them. The bottles fell on the roadside, broke into pieces and the broken bottle pieces scattered all over the roadside. That apart, the accused threatened the public that if anyone tried to catch him, he would murder them and further that the accused created panic at the spot and because of the panic situation, he ran towards the beach road through Apparsamy Street and escaped from the spot. Based on the complaint of Ms.Stephanie before H8 Thiruvottiyur Police Station, the Inspector of Police Law and Order, i/c of the said Police Station, after receiving the complaint, registered a case in Crime No.2122 / 2017 under Sections 341, 336, 294(b), 427, 392, 397 and 506(ii) IPC and as on date, the investigation is pending etc.,

5. The 2nd Respondent / the Commissioner of Police, Chennai Police, Vepery, Greater Chennai in exercise of the power by Sub Section (1) of Section 3 of the Tamilnadu 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 (Tamilnadu Act 14 of 1982) read with Orders issued by the Government in G.O.(D) No.206, Home Prohibition and Excise (XVI) Department dated 18.10.2017 and under Sub-Section (2) of Section 3 of the said Act had passed a Detention Order against Kumar @ Kilai Kumar dated 15.12.2017 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

6. The Petitioner, wife of the Detenu has assailed the correctness of the Detention Order dated 15.12.2017 passed by the 2nd Respondent mainly contending that the Impugned Order of Detention passed by the 2nd Respondent is an illegal, arbitrary one, besides there being a total non-application of mind by the 2nd Respondent.

7. The Learned Counsel for the Petitioner submits that the Detaining Authority had failed to appreciate that the family members of the Detenu was not informed and in short, they were kept in the dark and this had prevented the Petitioner and Detenu to make an effective representation before the Government.

8. The Learned Counsel for the Petitioner contends that the Detaining Authority had failed to note the Grounds of Detention in English and that the same were not properly translated in Tamil Language and hence, the Detention Order is liable to be set aside.

9. The Learned Counsel for the Petitioner takes a stand that the Detaining Authority had not applied his mind as regards 'the proper procedure' being followed and had passed an order in a mechanical fashion.

10. Yet another plea taken on behalf of the Petitioner is that the 2nd Respondent had passed an Order of Detention without going through the records relating to the cases and in short, the Adverse

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Cases mentioned in the ground of Detention were foisted only to invoke Act 14 of 1982 against the Detenu. Apart from that, the relative of the Detenu was not informed about the arrest in adverse case and the ground case properly.

11. Besides the above, the satisfaction of the Detaining Authority in arriving at a conclusion of 'Compelling necessity' suffers from the vice of non-application of mind.

12. Per contra, it is the submission of the Learned Government Advocate (Crl.Side) that the Detenu, Kumar @ Kilai Kumar was actively involved in four chain snatch cases registered in H8, Thiruvottiyur Police Station and that each case are under investigation. Furthermore, on 20.11.2017, according to the Respondents, the Detenu was involved in robbery case and at the time of arrest and enquiry in the ground case, the Detenu admitted the offences, which are prejudicial to the maintenance of public order as well as safety of public property.

13. The Learned Government Advocate (Crl.Side) for the

Respondents proceeds to point out that with a view of prevent the Detenu from indulging in such criminal activities, he was detained under Tamil Nadu Act 14 of 1982.

14. The Learned Government Advocate (Crl.Side) brings it to the notice of this Court that the intimation of Detention of the Detenu was given in writing by the Sponsoring Authority in his Memo dated 16.12.2017 to Tmt.Lakshmi W/o Pandiyan, [Mother of Detenu] and also that the ground of detention were translated into Tamil properly and supplied to the Detenu in jail on 18.12.2017 under proper acknowledgement.

15. Lastly, it is submitted on behalf of the Respondents that only after making independent assessment of the case against the Detenu, the Detaining Authority, after carefully perusing the records and material evidences against the Detenu placed before him by the Sponsoring Authority, the Authority had passed the Impugned Order of Detention in accordance with Law.

16. It is to be pointed out that Section 2(f) of the Tamilnadu Act,

14 of 1982 defines 'Goonda'. A person cannot be detained as 'Goonda' unless there is an allegation of his involvement in more than one offence on various occasions.

17. As a matter of fact, even a solitary act, which has the impact of affecting the normal life and public peace are good enough to pass an 'Order of Detention' against the concerned person. What is to be seen is the effect of an act on the even tempo of life, the extent of its reach upon the society and its impact, as per decision of **Hon'ble Supreme Court [State of Uttarpradesh V. Sanjai Pratap Gupta] reported in 2004(8) SCC 591.**

18. It is to be borne in mind that 'Public Order' is the even tempo of Life of the community taking the Country as a whole or even a specified locality, as per decision of **Hon'ble Supreme Court [Pushpa Devi M.Jatia V. M.L.Wadhawan] reported in AIR 1987 SC 1748.** It is true that power of ordering Preventive Detention given to the concerned Authorities is to be exercised in an exceptional case, as visualised by the various provisions of the different statutes dealing with Preventive Detention and undoubtedly, the same is to be used with great care,

caution and circumspection.

19. It is to be relevantly pointed out that whether the grounds specified in the Order of Detention are adequate enough or not is not within the domain of Court's discretion. However, it is the matter of subjective satisfaction of authorities concerned.

20. In reality, a Court of Law is to be vigilant, quite cautious and diligent in examining whether the Detenu's rights have been taken away arbitrarily, capricious or in a whimsical or cavalier fashion.

21. As far as the present case is concerned, the Detaining Authority / 2nd Respondent in the Detention Order dated 15.12.2017 had referred to four cases relating to the Detenu, viz., Thiru.Kumar @ Kilai Kumar on the file of H8 Thiruvottiur Police Station in respect of an offence under Section 379 IPC. The ground case in Crime No.2122 of 2017 for offences under Sections 341, 336, 294(b), 427, 392, 397 and 506(ii) IPC was also taken note of and considered by the Detaining Authority and because of the panic situation created by the Detenu and with a view to prevent him from indulging in such activities, which are

prejudicial to the maintenance of public order, the Detention Order came to be passed on 15.12.2017. Insofar as the plea that the Detenu's family was not informed about his preventive detention, the Memo of H8 Thiruvottiyur Police Station Inspector's office shows that one Lakshmi (mother of Detenu) had affixed her signature after coming to know about the Detention Order passed against her son and also she had received a copy of the same. Also that the Detenu had affixed the signature in Tamil in regard to the receipt of Detention Order dated 15.12.2017, which he received on 16.12.2017 at 17.10 hrs. In the rubber stamp affixed wherein the signature of the Detenu was obtained, it is mentioned in Tamil. The Detention Order dated 15.12.2017 in English was read and explained to him apart from serving of the same.

22. It cannot be gainsaid that the Impugned Order of Detention dated 15.12.2017 suffers from any legal infirmities. As a matter of fact, the Detaining Authority had taken note of the four adverse cases pending against Detenu, Kumar @ Kilai Kumar and also by considering the involvement of the Detenu in the ground case, ultimately passed the Detention Order, which in the considered opinion of this Court is free from any legal flaw. Looking at from any angle, the present Habeas

Corpus Petition fails.

In fine, the present Habeas Corpus Petition is dismissed. The Order of Detention dated 15.12.2017 passed by the 2nd Respondent / Commissioner of Police, Greater Chennai is sustained by this Court for the reasons assigned in the present Habeas Corpus Petition.

(M.V.J.)

(R.H.J.)

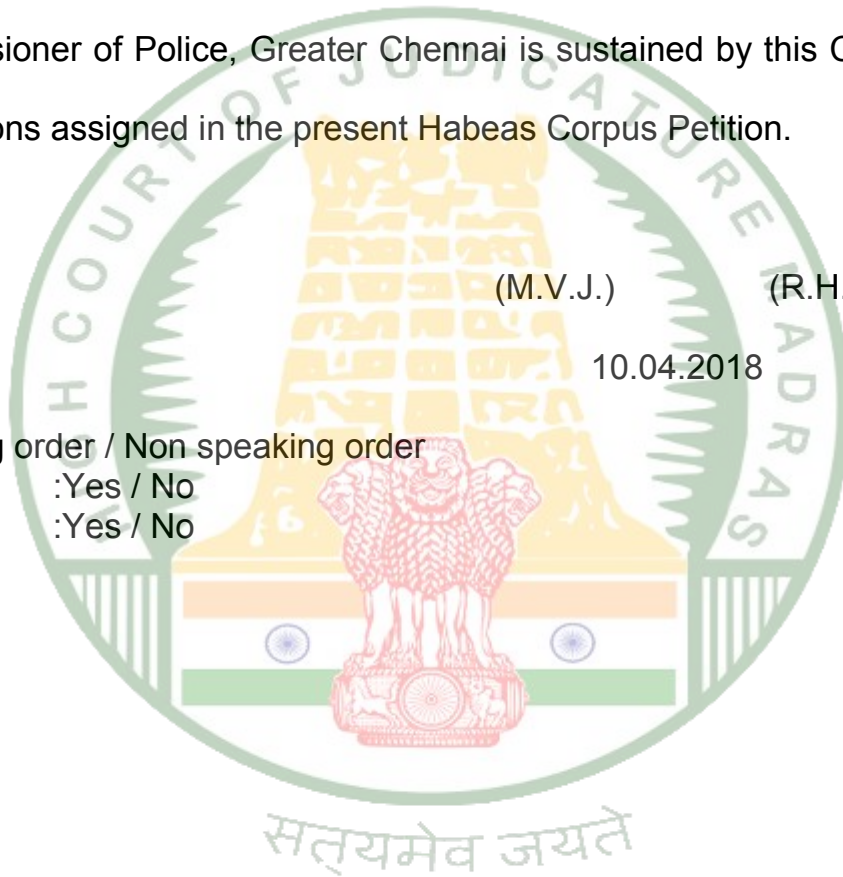
10.04.2018

Speaking order / Non speaking order

Index :Yes / No

Internet :Yes / No

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To

1. State of Tamilnadu rep. By
The Secretary to Government
Home, Prohibition Excise Department,
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Chennai – 600 009

2. The Commissioner of Police,
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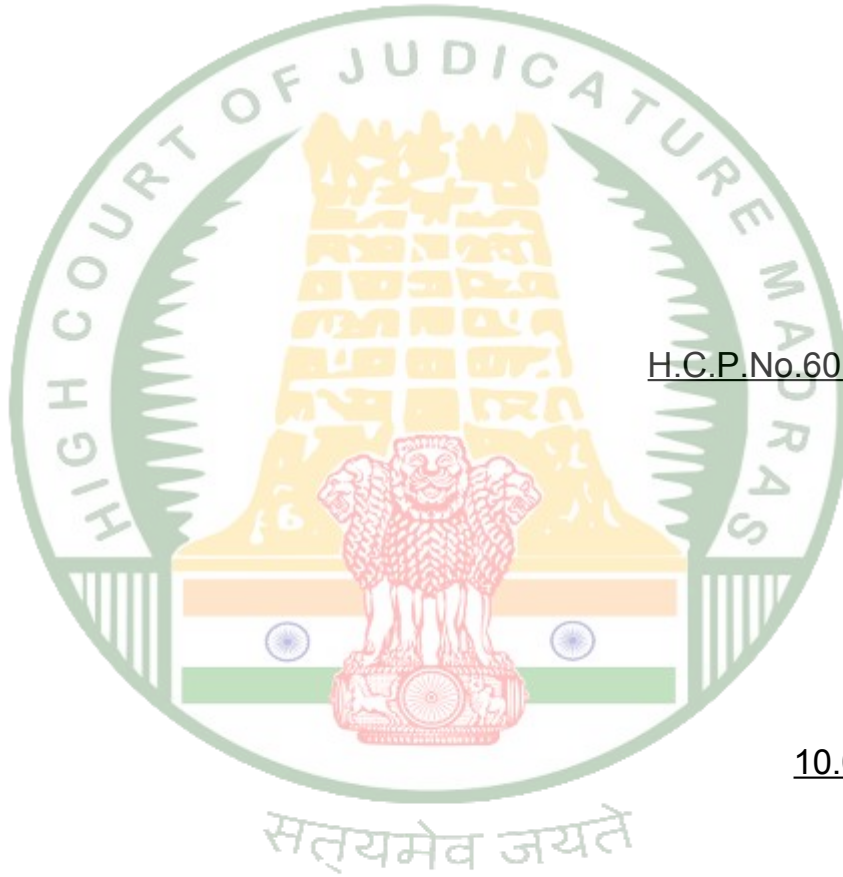
3. The Public Prosecutor,
High Court, Madras



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M.VENUGOPAL, J.
and
R.HEMALATHA, J.

ssd



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