

In the High Court of Judicature at Madras

Dated: 03.04.2018

Coram:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mrs.Justice R.HEMALATHA

H.C.P.No.71 of 2018

Kalavathi

.. Petitioner

Vs.

1.State of Tamil Nadu
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector and
District Magistrate,
Erode District,
Erode.

.. Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to direct the respondents to produce the body of the detenu by name Parames alias Parameswaran, aged 27 years, S/o.(Late) Ponnai presently confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith after calling for the records pertaining to the detention order dated 12.12.2017 made in Cr.M.P.No.24/Goonda/2017 C1 on the file of the second respondent and to quash the same.

For Petitioner : Mr.R.Arun Dattan

For Respondent : Mr.R.Ravichandran
Nos.1 & 2 Government Advocate (Crl. Side)

O R D E R

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

The Petitioner has preferred the instant Writ of Habeas Corpus Petition seeking for passing of an order by this Court to produce the body of the detenu by name Parames @ Parameswaran aged about 27 years S/o.Late Ponnann, presently confined at Central Prison, Coimbatore and set him at liberty after calling for the records pertaining to the detention order dated 12.12.2017 made in Cr.M.P.No.24/Goonda/2017 C1 on the file of the Second Respondent.

2.Heard the Learned counsel for the Petitioner and the Learned Government Advocate (Crl. Side) appearing for the Respondents.

3.The Detenu is involved in five adverse cases which run as under:

1)Cr.No.253/2015 on the file of the Gobichettipalayam Police Station under Section 379 IPC;

2)Cr.No.328 of 2017 on the file of the Nambiyur Police Station under Sections 454, 511 IPC;

3)Cr.No.777 of 2017 on the file of the Gobichettipalayam Police Station under Sections 454, 511 IPC;

4)Cr.No.814 of 2017 on the file of the Gobichettipalayam Police Station under Sections 454, 511 IPC; and

5)Cr.No.842 of 2017 on the file of the Gobichettipalayam Police Station under Sections 392, 394 IPC.

4.The Learned counsel for the Petitioner submits that in all the afore stated five cases, the detenu was not an accused and that the detenu is no way connected with these five cases named as adverse cases against the Detenu.

5.As regards the facts of the ground case are that on 05.11.2017, when the Sub Inspector of Police, Siruvalur Police Station was on duty, one Mr.Kannappan S/o.Palani Naicker residing at Door No.29/35, Bommanpalayam, Ayalur, Gobichettipalayam came and lodged a written complaint. According to him, on 05.11.2017 morning, he and his mother Rangammal, (aged 88 years) travelled in his motor cycle with an intention to go to his relative house at Kolappalur. He parked his motor cycle in front of Santhi Medicals near Kolappalur bus stop and went inside the shop to purchase a tablet. When his mother was standing near his bike, at that time, an individual aged about 30 years placed a knife on his mother's neck and threatened to her life and snatched the half sovereign gold ear

studs which she was wearing on her ears and 1½ sovereigns gold chain that she wore on her neck. On hearing the alarm of his mother, Kannappan, Selvaraj and other nearby members of the public ran towards her and that on seeing this, the individual swung around the knife kept in his hand and threatened them by saying that he would kill if any body tried to catch him. The members of the public who gathered there on seeing the said individual activities, scattered out of fear and the nearby shop keepers closed their shops. The aforesaid person at that point of time got into the ascending TVS XL Super green colour two wheeler bearing registration No.TN 37D 9901 which was parked by him there and escaped from there towards Gobichettipalayam swiftly along with the snatched gold jewels. Based on the complaint of Kannappan, S/o.Rangammal, in regard to the occurrence, the Sub Inspector of Police registered a case in Siruvalur Police Station in Crime No.224 of 2017 under Sections 392 r/w.397 IPC. Apart from that, based on the confessional statement of Parames @ Parameswaran (Detenu), the Inspector of Police, Gobichettipalayam Police Station, In-charge of Siruvalur Police Station seized ½ sovereign gold ear studs and 1 ½ sovereigns of gold chain, a knife which was utilised for the commission of offence and a TVS XL Super vehicle bearing registration No.TN 37D 9901, the case property of Siruvalur Police Station were seized in Cr.No.224 of 2017 by the Inspector of Police under a Mahazar in the presence of witnesses on 05.11.2017 at 15.00 hrs etc. As per the orders of the Court dated 05.11.2017, the said Parames @ Parameswaran, the Detenu was produced before the Learned Judicial Magistrate No.I, Gobichettipalayam and later his remand was extended till 14.12.2017.

6.It is represented on behalf of the Petitioner that the Siruvalur Police had foisted a case in Cr.No.224 of 2017 under Sections 392, 397 IPC dated 05.11.2017 in which her husband was remanded to judicial custody. In fact, her husband had not committed any offence to attract the penal provisions referred to in Cr.No.224 of 2017 on the file of the Siruvalur Police Station.

7.The Learned counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in Rekha Vs. State of Tamil Nadu Tr. Secretary to Government and another reported in 2011 (5) SCC at page 244 wherein it is clearly observed that the personal liberty of an individual is the most precious and valuable right guaranteed under the Constitution of India in Part III thereof. Therefore, an action can be taken under the Indian Penal Code or under the provision of Mines and Minerals Act and taking recourse to preventive detention Law would be an unwarranted one.

8.The Learned counsel for the Petitioner proceeds to point out that the Second Respondent had passed the impugned order of detention in a hurried manner without applying his mind and as such, the detention order dated 12.12.2017 is liable to be quashed.

9.The Learned counsel for the Petitioner projects an argument that there is no material in the form of Legal evidence on record to justify the subjective satisfaction on the part of the Respondents to arrive at a conclusion that the activities of the detenu will be prejudicial to the maintenance of public order.

10.Lastly, it is the submission of the Learned counsel for the Petitioner that the offences complained are not related to public order. However subjective satisfaction was arrived at by the concerned authority in an irrational manner. Also that, the stand of the Petitioner is that the ordinary Law is sufficient to deal with the detenu and recourse to preventive detention is an illegal one.

11.The Learned Government Advocate (Crl. Side) appearing on behalf of the Respondents forcibly submits that in the first adverse case in Cr.No.253/2015, the detenu was red handedly caught by the complainant and some public who produced them before the Sub Inspector of Police, Gobichettipalayam and lodged a complaint. Insofar as the adverse cases 2, 3 & 4 are concerned viz., Nambiyur Police Station in Cr.No.328/2017, Gobichettipalayam Police Station in Cr.Nos.777/2017 and 814/2017 the detenu had attempted to commit theft by break open the door locks in a school and houses.

12.It is further represented that the Petitioner had admitted the guilt in his voluntary confessional statement. Insofar as the fifth adverse case, namely, Cr.No.842/2017 on the file of the Gobichettipalayam Police Station is concerned, according to the Respondents, the detenu had snatched gold studs from an old lady, while she was grazing her cow and the case property was recovered from him. As such, it is the submission of the Respondents that in all these five cases, the Detenu Parames @ Parameswaran is an accused and contra plea taken on behalf of the Petitioner cannot be accepted.

13.The Learned counsel for the Respondents brings it to the notice of this Court, on 05.11.2017 morning, while the complainant mother was standing in front of Santhi Medicals near Kolappalur, at that time, the detenu placed a knife in Rangammal's neck and threatened to her life and snatched ½ sovereign gold ear studs which she was wearing and 1½ sovereigns gold chain that she wore on her neck and swing around the knife kept in his hand and threatened the public by saying that he would kill if any body try to catch him. On receipt of

the complaint, the Sub Inspector of Police, registered a case in Siruvallur Police Station in Cr.No.224/2017 under Section 392 r/w.397 IPC. In this regard, the contention of the Learned counsel for the Respondents is that to raise a plea on behalf of the Petitioner that against the Petitioner's husband, a false case was foisted is not a correct one.

14.The Learned Government Advocate (Crl. Side) for the Respondents projects an argument that the purpose of preventive detention is not punitive but only preventive in character. Also it is projected on the side of the Respondents that the concept of public order is to be examined with reference to degree to disturbance and its effect upon life of community in concerned locality and that the detenu has developed his criminal activities step by step which is quite evident from the perusal of the case diaries and the submission of the Learned counsel for the Petitioner on behalf of the Respondents is that the ordinary Law is not good enough to curtail his criminal activities.

15.The Learned Government Advocate (Crl. Side) for the Respondents that the detention order was passed by the detention authority on factual basis and on due application of mind after taking note of the relevant cases recorded.

16.The Learned Government Advocate (Crl. Side) for the Respondents takes a stand that the normal Criminal Law will not have the desired effect of effectively preventing the detenu from indulging in such activities which are prejudicial to the maintenance of public order and peace and only because of compelling necessity to detain him in custody under Tamil Nadu Act 14/1982. The detention order was passed in the interest of public order and public peace.

17.In this connection, this Court significantly points out that the term 'goondas' as per Section 2(f) of Tamil Nadu Act 14/1982 enjoins as under:

“(f) “goonda” means a person, who either by himself or as a member of or leader of a gang, [The word “habitually” was omitted by Tamil Nadu Act 19 of 2014, with effect from 13th October 2014] commits, or attempts to commit or abets the commission of offences, {[substituted for the expressions “punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 “(Central Act of 1860)” by Tamil Nadu Act 16 of 2008] punishable under Section 153 or 153-A under Chapter VIII} or {[substituted by Tamil Nadu Act 20 of 2014, with effect from 13th October 2014] Chapter XVI other than sections 354, 376, 376-A, 376-B, 376-C, 376-D and 377} or

Chapter XVII or Chapter XXII of the Indian Penal Code, (Central Act XLV of 1860) or punishable under Section 3 or Section 4 or Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992);"

18.At this stage, this Court worth recollects and recalls the decision of the Hon'ble Supreme Court in R.Kalavathi Vs. State of Tamil Nadu reported in 2006 (6) SCC at pg 14, wherein it is observed that even a single act which has the propensity of affecting the even tempo of life and public tranquility would sufficient for detention.

19.Also, this Court quiet aptly points out the decision of the Hon'ble Supreme Court in State of Uttar Pradesh Vs. Sanjai Pratap Gupta reported in 2004 (8) SCC at page 591 wherein it is held that "it is not the number of acts that matters while ordering preventive detention, what has to be seen is the effect of the act on the even tempo of life and the extent of its reach upon the society and its impact".

20.On a careful consideration of the respective contentions of the Learned Counsels and also this Court taking note of the attendant facts and circumstances of the present case in an encircling manner, is of the considered view that the Detention Authority who is conferred with the power to pass an order of detention viz., the impugned order dated 12.12.2017 has exercised his due diligence and has considered the relevant aspects of the matter in a dispassionate, objective, fair manner and considering the interest of the society which is paramount and also taking note of the involvement of the Detenu in the concerned offences, it cannot be said that the impugned order dated 12.12.2017 passed by the Second Respondent/District Collector & District Magistrate, Erode District suffers from legal infirmity. Per contra, the same is free from any Legal Flaw.

21.With regard to the plea taken on behalf of the Petitioner that the ordinary Law is sufficient to deal with the detenu Parames @ Parameswaran and the recourse to preventive detention is an illegal one, it is to be pointed out by this Court that even a single incident is sufficient to bring a case within a purview of Act 14/1982 and viewed in that perspective, the plea taken on behalf of the Petitioner that ordinary Law is sufficient to deal with the detention order cannot be consonance in the eye of Law. Also that, by no stretch of imagination, it can be stated that the conclusion arrived at by the Second Respondent is passed on mere Ipse Dixit. Looking at from any point of view, the present Habeas Corpus Petition sans merits.

22.In fine, this Habeas Corpus Petition is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

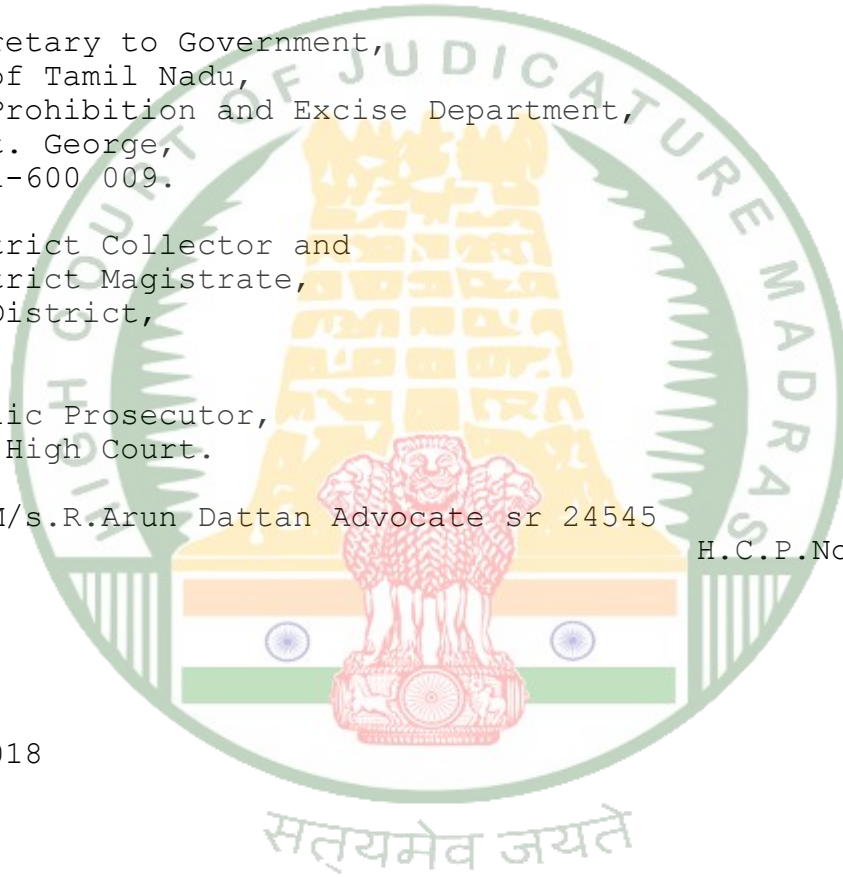
2.The District Collector and
District Magistrate,
Erode District,
Erode.

3.The Public Prosecutor,
Madras High Court.

+1 cc to M/s.R.Arun Dattan Advocate sr 24545

H.C.P.No.71 of 2018

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