

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2347/2018

D.Dhanalakshmi

.. Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai 600007.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records made in impugned order BCDFGISSSV No.880/2018 dated 24.09.2018 on the file of the 2nd respondent and to quash the same as illegal and direct the respondents to produce the detenu Devaraj son of Vijayakumar, aged 34 years now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner .. Mr.S.Kingston Jerold

For Respondents .. Mr.C.Iyyappa Raj, APP

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 24.09.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a "Goonda" under the provisions of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the present petition is filed.

2 As per the Grounds of Detention dated 24.09.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i)Adverse case:

<i>Sl No.</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	R5 Virugambakkam PS Cr.No.336/2018	379 IPC
2	R5 Virugambakkam PS Cr.No.503/2018	379 IPC
3	R5 Virugambakkam PS Cr.No.504/2018	457, 380 IPC

3 It is further alleged that the defacto complainant is in the occupation of printing and manufacturing notebooks and on 15.08.2018 at about 11.00 hours, when he was proceeding near the junction of Kalliamman Koil Street and Reddy Street, at that juncture, a person whose identity was ascertained later as Devaraj, wrongfully restrained the complainant and scolded him in filthy language and also threatened him with dire consequences by brandishing a knife and in the process, snatched cash of Rs.500/- and also the cellphone from the shirt pocket and when the complainant raised alarm, public gathered and they were also threatened with dire consequences by the detainee and subsequently, he ran away. The Inspector of Police, Virugambakkam Police Station, on the basis of the complaint given by the defacto complainant, registered a case in Cr.No.502/2018 for the commission of the offences u/s.341, 336, 427, 397 & 506[ii] IPC **[ground case]** and took up the case for investigation. Later on, he effected the arrest of the detainee on 15.08.2018 at about 12.00 Noon and also seized the knife used for the commission of the offence under the cover of Form-95 and on enquiry, the accused has also admitted his involvement in the ground case as well as the case registered by R-8 Vadapalani Police Station in Cr.No.429/2018 and his voluntary confession statement was also recorded in the presence of witnesses and based on the admissible portion of the confession statement, cellphone, cash of Rs.500/- and that apart, cash of

Rs.3,50,000/- were also recovered and later on, he was produced before the Court of XXIII Metropolitan Magistrate, Saidapet, Chennai and he was remanded to judicial custody till 29.08.2018 and it was extended till 26.09.2018. The Detaining Authority on a perusal and consideration of the materials has arrived at the subjective satisfaction that the fact of involvement of the detenu in the adverse cases as well as in the ground case, would be prejudicial to the maintenance of public order and hence, branded him as "Goonda" and detained him under the Tamil Nadu Act 14 of 1982 vide impugned order and challenging the legality of the same, the present habeas corpus petition is filed.

4 The learned counsel for the petitioner has drawn the attention of this Court to inner page No.4 of the Grounds of Detention and would submit that on arrest and during the course of enquiry, the detenu has admitted his involvement in the ground case and also in R-8 Vadapalani Police Station Cr.No.429/2018 and it is the primordial submission of the learned counsel for the petitioner that as to the involvement of the detenu in R-8 Vadapalani Police Station Cr.No.429/2018, no material whatsoever has been furnished to the detenu in the booklet and it is also highly doubtful whether any material relating to the case has been placed before the Detaining Authority and in the absence of the same, the subjective satisfaction arrived at by the Detaining

Authority is vitiated and hence, prays for quashment of the same.

5 *Per contra*, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 As rightly pointed out by the learned counsel for the petitioner as to the involvement of the detenu in R-8 Vadapalani Police Station Cr.No.429/2018, no material whatsoever has been produced and the Booklet supplied to the detenu also do not contain the said material. In the considered opinion of the Court, in the absence of any material as to the involvement of the detenu in the above cited case, the subjective satisfaction arrived at by the 2nd respondent / Detaining Authority is vitiated and hence, on this sole ground, the detention order, impugned herein, is liable to be set aside.

M.SATHYANARAYANAN, J.,
AND

M.NIRMAL KUMAR, J.,
AP

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 24.09.2018 made in BCDFGISSSV No.880/2018 is hereby set aside. The detenu, viz., Devaraj, son of Vijayakumar, aged 34 years, who is now confined in the Central Prison, Puzhal, Chennai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case.

[M.S.N, J.] [M.N.K., J.]
15.02.2019

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To

- 1.The Secretary, State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai 600007.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent
Central Prison, Puzhal, Chennai.

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H.C.P.No.2387/2018