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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.07.2018
DELIVERED ON : 14.08.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P. (MD) No. 884 and 886 to 890 of 2018

V.Amutha ... Petitioner in H.C.P. (MD) No. 884 of 2018

K.Nashiba Banu ... Petitioner in H.C.P. (MD) Nos. 886, 888 and 890
of 2018

S.Subbulakshmi ... Petitioner in H.C.P. (MD) No. 887 of 2018

K.Selvi ... Petitioner in H.C.P. (MD) No. 889 of 2018

Vs.

1. The State of Tamil Nadu rep. by its Home Secretary,
Rep. by its Home Secretary,
Secretariat, Fort St. George,
Chennai - 600 009.

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

3. The Secretary,
Ministry and Home Affairs,
Department of Internal Security,
North Block, New Delhi - 1.

.. Respondents 1 to 3 in
all the petitions

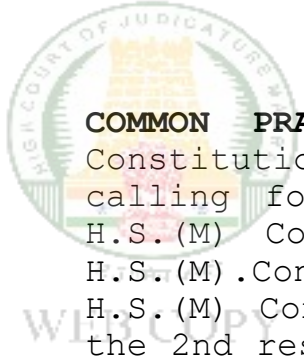
4. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli District.

... 4th Respondent in H.C.P. (MD) Nos.
884, 886, 887 and 889 of 2018

The Superintendent of Prisons,
Borstal School,
Pudukottai.

.. 4th Respondent in H.C.P. (MD) Nos.

888 and 890 of 2018



COMMON PRAYER: The petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records in H.S.(M) Confdl.No.02/NSA/2018, H.S.(M) Confdl.No.01/NSA/2018, H.S.(M). Confdl. (NSA) No.04/2018, H.S.(M).Confdl.(NSA) No.05/2018 H.S.(M).Confdl.(NSA) No.03/2018, H.S.(M) Confdl. (NSA) No.06/2018, dated 10.06.2018 on the file of the 2nd respondent herein and quash the same as illegal and further direct the respondents to produce the detainees namely Velmurugan @ Murugan Son of Chelladurai, aged about 40 years, Kaliloor Rahuman, Son of Seyan Mahthum, aged about 47 years, P.Saravanan, Son of Pandaram, aged about 32 years, Mohamed Anas, Son of Kaliloor Rahuman, aged about 21 years, C.Kottaiyan, Son of Chinnan, aged about 37 years, Mohamad Irshath, Son of Kaliloor Rahman, aged about 19 years, now confined at Central Prison, Palayamkottai, and District Jail & Bostal School, Pudukottai before this Hon'ble Court and set them at liberty and secure the ends of justice.

For Petitioners in all : Mr.N.R.Elango, Senior Counsel for
Mr.S.Parthasarathi

For Respondents 1, 2 & 4: Mr.P.H.Arvinth Pandiyan,
Additional Advocate General,
Assisted by Mr.V.Neelakandan
Additional Public Prosecutor.

For 3rd Respondent : Mr.V.Kathirvelu,
Assistant Solicitor General,
Assisted by Mr.K.Prabhu,
Central Government Standing Counsel
(in All the Petitions)

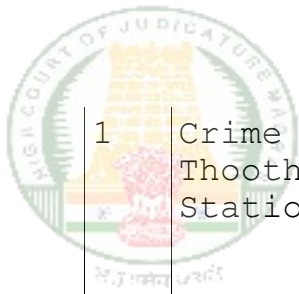
COMMON ORDER

(Order of the Court was made by C.T.SELVAM,J.)

These Habeas Corpus Petitions challenge the orders of preventive detention passed by the second respondent in proceedings H.S.(M) Confdl.No.02/NSA/2018, H.S.(M) Confdl.No.01/NSA/2018, H.S.(M). Confdl. (NSA) No.04/2018, H.S.(M).Confdl.(NSA) No.05/2018 H.S.(M).Confdl.(NSA) No.03/2018, H.S.(M) Confdl. (NSA) No.06/2018, dated 10.06.2018. All these detainees have come to adverse notice in relation to the protest in and around Thoothukudi against Sterile, an industry engaged in copper smelting. The adverse cases are common as is the ground case.

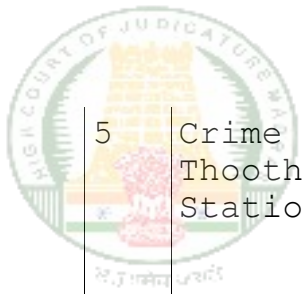
2.The offences in which the detainees are involved in the adverse cases and ground case is as follows:

Sl. No.	Crime No. and police Station	Section of Law	Falling under Chapter of IPC
https://hcservices.ecourts.gov.in/hcservices/			



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1	Crime No.298 of 2018, Thoothukudi South Police Station	143 I.P.C.	VIII
		147 I.P.C.	VIII
		148 I.P.C.	VIII
		353 I.P.C.	XVI
		3 of TNPPDL Act, 1992	-
2	Crime No.299 of 2018, Thoothukudi South Police Station	147 I.P.C.	VIII
		148 I.P.C.	VIII
		341 I.P.C.	XVI
		436 I.P.C.	XVII
		4 of TNPPDL Act, 1992	-
3	Crime No.191 of 2018, Thoothukudi SIPCOT Police Station	147 I.P.C.	VIII
		148 I.P.C.	VIII
		188 I.P.C.	X
		324 I.P.C.	XVI
		332 I.P.C.	XVI
		353 I.P.C.	XVI
		448 I.P.C.	XVII
		450 I.P.C.	XVII
		307 I.P.C.	XVI
		436 I.P.C.	XVII
		506(ii) I.P.C.	XXII
		3(1) of TNPPDL Act, 1992	-
		4 of TNPPDL Act, 1992	-
		3 of ES Act, 1908	-
		r/w 174 Cr.P.C.	-
4	Crime No.192 of 2018, Thoothukudi SIPCOT Police Station	147 I.P.C.	VIII
		148 I.P.C.	VIII
		149 I.P.C.	VIII
		188 I.P.C.	X
		324 I.P.C.	XVI
		448 I.P.C.	XVII
		353 I.P.C.	XVI
		506(ii) I.P.C.	XXII
		436 I.P.C.	XVII
		3 of TNPPDL Act, 1992	-
		4 of TNPPDL Act, 1992	-



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5	Crime No.208 of 2018, Thoothukudi SIPCOT Police Station	147 I.P.C.	VIII
		148 I.P.C.	VIII
		188 I.P.C.	X
		353 I.P.C.	XVI
		506(ii) I.P.C.	XXII
		436 I.P.C.	XVII
		3 of TNPPDL Act, 1992	XVII
		4 of TNPPDL Act, 1992	-
6	Crime No.301 of 2018, Thoothukudi South Police Station	147 I.P.C.	VIII
		148 I.P.C.	VIII
		188 I.P.C.	X
		353 I.P.C.	XVI
		324 I.P.C.	XVI
		341 I.P.C.	XVI
		4 of TNPPDL Act, 1992	-

The orders of detentions explicitly are passed towards preventing the detainees from indulging in such activities which are prejudicial to the security of the State and prejudicial to the maintenance of public order.

3.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 defines GOONDA as follows:

"2(f) 'goonda' means a person, who either by himself or as a member of or leader of a gang, commits, or attempts to commit or abets the commission of offences, punishable under section 153 or 153-A under Chapter VIII or 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);"

It readily can be seen that in all the adverse cases as also the ground case the detainees answer to the description of GOONDA. Section 17 of Tamil Nadu Act 14 of 1982 reads as follows:

"17. Detention orders against any bootleggers, cyber law offenders, drug-offender, forest offender, goonda, immoral traffic offender, sand-offender, sexual offenders, slum-grabber or video pirates to be made under this Act and not under National Security Act. - On and after the commencement of this Act, no order of detention under the



National Security Act, 1980 (Central Act 65 of 1980) shall be made by the State Government or any of their officers under that Act in respect of any bootlegger, cyber law offender, drug-offender, forest offender, goonda, immoral traffic offender, sand-offender, sexual offenders, slum-grabber or video pirates in the State of Tamil Nadu, on the ground of preventing him from acting in any manner prejudicial to the maintenance of public order, where an order of detention may be or can be made against such person, under this Act."

Therefore, the detaining authority acting in exercise of the powers vested with him under the National Security Act, 1980 is precluded from passing orders against the detainees herein on the ground of their actions being likely to be prejudicial to the maintenance of Public order.

4.The orders of detention have been passed in exercise of powers under Section 3(2) of the National Security Act, 1980. Such section reads as follows:

"3(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation. - For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under this Act."

5.Section 8 of Jammu and Kashmir Public Safety Act, 1978 reads thus:

"8.Detention of certain persons.

(1) The Government may -

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

(1) the security of the State or the maintenance of the public order;



..."

6. The Hon'ble Supreme Court in G.M. Shah v. State of J and K [(1980) 1 SCC 132] held as follows:

8. The expressions "law and order", "public order" and "security of the State" are distinct concepts though not always separate. Whereas every breach of peace may amount to disturbance of law and order, every such breach does not amount to disturbance of public order and every public disorder may not prejudicially affect the "security of the State". This is borne out from the observations made by Patanjali Sastri, J. in the decision of this Court in Romesh Thappar v. The State of Madras (AIR 1950 SC 124) which are as follows:-

"As Stephen in his Criminal Law of England observes: Unlawful assemblies, riots, insurrections, rebellions, levying of war, are offences which run into each other and are not capable of being marked off by perfectly defined boundaries. All of them have in common one feature, namely that the normal tranquillity of a civilized society is in each of the cases mentioned disturbed either by actual force or at least by the show and threat of it." Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable assembly "sub- clause (b)" and (c) right of association "sub- clause (c)" may be restricted under clauses (3) and (4) of Article 19 in the interests of "public order," which in those clauses includes the security of the State. The differentiation is also noticeable in Entry 3 of List III (Concurrent List) of the Seventh Schedule, which refers to the "security of a State" and "maintenance of public order" as distinct subjects of legislation. The Constitution thus requires a line to be drawn in the field of public order or tranquillity marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder



which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind."

9. As observed by Hidayatullah, J. (as he then was) in *Dr. Ram Manohar - Lohia v. State of Bihar* (AIR 1966 SC 740) one has to imagine three concentric circles, in order to understand the meaning and import of the above expressions. 'Law and order' represents the largest circle within which is the next circle representing "public order" and the smallest circle represents "security of State". It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. It is in view of the above distinction, the Act defines the expressions "acting in any manner prejudicial to the security of the State" and "acting in any manner prejudicial to the maintenance of public order" separately. An order of detention made either on the basis that the detaining authority is satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State or on the basis that he is satisfied that such person is acting in any manner prejudicial to the maintenance of public order but which is attempted to be supported by placing reliance on both the bases in the grounds furnished to the detenu has to be held to be an illegal one vide decisions of this Court in *Bhupal Chandra Ghosh v. Arif Ali* [(1974)1 SCC 253] and *Satya Brata Ghose v. Arif Ali* [(1974)3 SCC 600]."

What is found prohibitive in the above judgment is precisely what the detention order says viz., the detainees have been found in indulging in activities prejudicial to the in security of the State and prejudicial to the maintenance of public order.

7.While learned Senior Counsel for petitioners has contended that security of the State would relate to the security of the nation as a whole, learned Additional Advocate General has strenuously contended that security of the State could relate to also any particular State or part thereof within the Union of India by reference to Section 14(a) the National Security Act, 1980. We may reserve discussion for a future case.

8.Learned Senior Counsel for the petitioner raised also the ground of denial of opportunity to make effective representation against the order of detention in as much as the detaining authority has informed that the detainees have been granted bail by the Vacation Principal Sessions Judge, Thoothukudi in CrI.M.P.No.1497 of 2018 dated 29.05.2018, but the crime number in respect of which bail was granted has not been informed in the detention order.

9. Learned Senior Counsel also urged the ground of non-application of mind on the part of the detaining authority since the order of detention informs that the detenues were lodged in the Thoothukudi District Jail at Perurani, Thoothukudi District, which was factually incorrect as readily verifiable from the fact that on the very date of the order viz., 10.06.2018 the order of detentions have been served on the detenues at the Central Prison at Palayamkottai. Submitting that such is not the case, learned Additional Advocate General, across the bar, handed over two communications, which read as follows:

"Revenue Administration, Disaster Management and Mitigation
Department

From	To
Thiru. Sandeep Nanduri, I.A.S., District Collector and District Magistrate, Thoothukudi District, Thoothukudi.	The Superintendent, District Jail, Perurani, Thoothukudi District.

Roc. H.S. (M) Confdl. (NSA) No.02/18, Dated 10.06.2018

Sub: The National Security Act, 1980 (Central Act 65 of 1980) - Detention of one Velmurugan @ Murugan aged 40/18, S/o. Chelladurai, Door No.5/262A, Main Road, Puthupatti, Alangulam Taluk, Alangulam Police Station Limit, Tirunelveli District. - Detaining under National Security Act 1980 - Grounds of Detention, Detention order, Police Records etc. Both English and Tamil - sent for service - reg.

Ref: This Office H.S. (M) Confdl. (NSA) No.02/18, Dt. 10.06.2018.

In continuation of the order cited, I am sending herewith the grounds of detention both English and Tamil and Police records in bound volume entrusted with the Inspector of Police, Thoothukudi South P.S. to serve on the detenu Velmurugan @ Murugan aged 40/18, S/o. Chelladurai, Door No.5/262A, Main Road, Puthupatti, Alangulam Taluk, Alangulam Police Station Limit, Tirunelveli District. I request that the detenu Velmurugan @ Murugan lodged in your District Jail should be transferred to the Central Prison, Palayamkottai for causing service of detention order and other records.

Sd.
DISTRICT COLLECTOR
AND
DISTRICT MAGISTRATE
THOOTHUKUDI DISTRICT,
THOOTHUKUDI"



"REVENUE DEPARTMENT

From

To

Thiru. Sandeep Nanduri, I.A.S.,
District Collector and
District Magistrate,
Thoothukudi District,
Thoothukudi.

The Superintendent,
Central Prison,
Palayamkottai.
Thoothukudi District.

H.S. (M) Confdl. (NSA) No.02/18, Dated 10.06.2018

Sir,

Sub: The National Security Act, 1980 (Central Act 65 of 1980) - Detention of one Velmurugan @ Murugan aged 40/18, S/o. Chelladurai, Door No.5/262A, Main Road, Puthupatti, Alangulam Taluk, Alangulam Police Station Limit, Tirunelveli District. - Detaining under National Security Act 1980 - Grounds of Detention, Detention order, Police Records etc. Both English and Tamil - sent for service - reg.

Ref: This Office H.S. (M) Confdl. (NSA) No.02/18, Dt. 10.06.2018.

In continuation of the order cited, I am sending herewith the grounds of detention both English and Tamil and Police records in bound volume through the Inspector of Police, Thoothukudi South P.S. to serve on the detenu Velmurugan @ Murugan aged 40/18, S/o. Chelladurai, Door No.5/262A, Main Road, Puthupatti, Alangulam Taluk, Alangulam Police Station Limit, Tirunelveli District, who has been detained in Central Prison, Palayamkottai.

I request you to serve them on the detenu and return the served copies at once.

Sd.
DISTRICT COLLECTOR
AND
DISTRICT MAGISTRATE
THOOTHUKUDI DISTRICT,
THOOTHUKUDI.

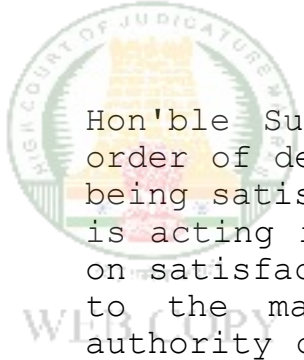
Encl:-

Ground of Detention,
Detention order (Tamil & English)
and Police Records."

Learned Senior Counsel for petitioners raised strong objections stating that the communications were after thoughts to get over the position that while passing the detention order the detaining authority was unaware where the detenu was housed.

<https://hcservices.ecourts.gov.in/hcservices/>

10. This Court need do no more than follow the dictum of the



Hon'ble Supreme Court in G.M.Shah's case to the effect that the order of detention has to be based either on the detaining authority being satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State OR on satisfaction that such person is acting in any manner prejudicial to the maintenance of public order. Satisfaction of detaining authority cannot be on both counts at one and the same time. Hence, the detention order is liable to be set aside.

11. In the result, these Habeas Corpus Petitions are allowed and the Detention Orders, passed by the second respondent, in his proceedings in H.S.(M) Confdl.No.02/NSA/2018, H.S.(M) Confdl.No.01/NSA/2018, H.S.(M). Confdl. (NSA) No.04/2018, H.S.(M). Confdl.(NSA) No.05/2018 H.S.(M).Confdl.(NSA) No.03/2018, H.S.(M) Confdl. (NSA) No.06/2018, dated 10.06.2018, are quashed. The detenues, namely, Velmurugan @ Murugan Son of Chelladurai, aged about 40 years, Kaliloor Rahuman, Son of Seyan Mahthum, aged about 47 years, P.Saravanan, Son of Pandaram, aged about 32 years, Mohamed Anas, Son of Kalilur Rahman, aged about 21 years, C.Kottaiyan, Son of Chinnan, aged about 37 years, Mohamad Irshath, Son of Kalilur Rahman, aged about 19 years, are ordered to be set at liberty forthwith, if their detention is not required in connection with any other case.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-I)

To

- 1.The Home Secretary to Government,
Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Secretary to Government Of India,
Ministry and Home Affairs,
Department of Internal Security,
North Block, New Delhi - 1.
- 4.The Superintendent of Prison,
Central Prison,
Parayankottai,
Tirunelveli District.



5.The Superintendent of Prisons,
Borstal School,
Pudukottai.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2CCs to Mr.S.Parthasarathy Advocate in SR.No.78686.

+6CCs to Mr.K.Prabhu Advocate in SR.Nos.78740,78741,78742,78743,
78744,78745.

SJ

DS/SKN-RSK/SAR-1 :16.08.2018: 11P/15C

Order in
H.C.P. (MD) No.884 and 886 to 890 of 2018
14.08.2018