

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.24 of 2019

Deepesh Makkatil @ Ranjith

.. Petitioner

Versus

1.The Secretary to the Government
Home Prohibition and Excise Department
Secretariat, Chennai-600 009.

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

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 01.08.2018 in BCDFGISSSV No.624/2018 against the petitioner, detenu Deepesh Makkatil @ Ranjith, M/A 39, S/o Sadhanandan, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.Elavarasan

For Respondents : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

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

The petitioner herein is the detenu, who, vide impugned Order of Detention dated 01.08.2018 passed by the 2nd respondent by invoking Section 2(f) of the Tamil Nadu Act 14 of 1982, in branding him as "Goonda", came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the following case:

<i>Sl.No.</i>	<i>Crime No.</i>	<i>Section of law</i>
1.	Central Crime Branch Crime No.229/2018	420, 34 IPC r/w 24 & 10 of Emigration Act 1983

It is further averred that on 25.06.2018, the defacto complainant namely Thiru.Prabijith Pinnanath, a resident of Pinnannath House, Pathiparamba, Kozhikode District, Kerala had lodged a complaint against the detenu and others stating that they by giving false assurance to arrange job visa in reputed companies abroad, collected huge amount. The Inspector of Police, Team IX, Job Racket, Central Crime Branch, upon receipt of the said complaint, had registered a case in Cr.No.278/2018 under Sections 406, 420 IPC and 24 & 10 of Emigration Act, 1983 r/w 34 IPC on 30.06.2018 and took up the investigation. The detenu is already in

custody in connection with the adverse cases and formally arrested in connection with the ground case on 05.07.2018. After getting police custody, they produced the detenu before the Metropolitan Magistrate for the exclusive trial of CCB Cases and remanded to judicial custody till 20.07.2018 and the remand period was extended till 03.08.2018. During the course of investigation, the Sections were altered from 406, 420 IPC and 24 & 10 of Emigration Act r/w 34 IPC to 406, 420, 506(i) IPC and 24 & 10 of Emigration Act r/w 34 IPC.

3. The Detaining Authority namely, the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already come to adverse notice in a solitary case and his acts are prejudice to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing on behalf of the detenu has drawn attention of this Court to paragraph No.4 of the impugned detention order and would submit that the detenu has filed an application

for bail in connection with the adverse case in CrI.M.P.No.2580 of 2018 and the same is pending on the Court of Judicial Magistrate No.1, Poonamallee and admittedly, he did not file any bail application in connection with the ground case and the Detaining Authority, in order to derive the subjective satisfaction as to the real and imminent possibility of coming out on bail and indulge in other activities which are prejudicial to the public order and peace, has placed reliance upon the bail granted in CrI.M.P.No.10891 of 2017 by the Court of Principal Sessions, Chennai in Cr.No.173/2017 for the commission of offences under Sections 465, 467, 468, 471, 474, 420 & 12(1)(d) of Passport Act 1967. The primordial submission made by the learned counsel appearing for the petitioner by drawing attention of this Court of Page Nos.585 and 586 of the booklet is that the copies of the similar order granting bail were wholly illegible and on account of the same, the detenu was prevented from making effective representation for revoking the order of detention and that apart, the Detaining Authority has also failed to advert to the same and as such, the impugned order of detention is vitiated and hence, prays for appropriate orders.

5. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the 2nd respondent / Detaining Authority, after due and proper application of mind, had rightly reached the subjective satisfaction and clamped the order of detention and hence prays for dismissal of this petition.

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

7. As rightly pointed out by the learned counsel appearing for the petitioner, the similar order granting bail to the accused concerned in Cr.No.173/2017 is a relied upon document and the order concerned is available at Page Nos.585 and 586 of the booklet. A perusal of the contents of the same is wholly illegible and therefore, the detenu has been put to prejudice and he was prevented from making effective representation for revoking the order of detention and the Detaining Authority has also failed to advert to the same while passing the impugned order of detention. In the considered opinion of this Court, the said infirmity would definitely vitiate the impugned order of detention and hence on the sole ground, it warrants interference.

M.SATHYANARAYANAN.,J

AND

M.NIRMAL KUMAR.,J

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8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in BCDFGISSSV No.624/2018 dated 01.08.2018 is set aside and the detenu namely Deepesh Makkatil @ Ranjith, aged about 39 , Son of Sadhanandan, who is confined at Central Prison, Puzhal, Chennai is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

[M.S.N., J] [M.N.K., J]
26.03.2019

Internet : Yes/No

Index : Yes/No

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To

1.The Secretary,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Salem District.

3.The Public Prosecutor
High Court, Madras.

H.C.P.No.24 of 2019