

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 27.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.55 of 2019

Tmt.Ramani

.. Petitioner

Versus

1.Government of Tamil Nadu, rep by its
Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort.St.George,
Chennai 600 009.

2.The Commissioner of Police,
Greater 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 Memo No.1071/BCDFGISSSV/2018 dated 23.11.2018 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the body of her son Thiru.Mohan, son of Manikandan, aged 25 years, now confined in Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner: Mrs.R.Subadradevi

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

सत्यमेव जयते
ORDER

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

The petitioner is the mother of the detenu, who, vide impugned Order of Detention dated 23.11.2018 passed by the 3rd respondent by invoking Section 2(f) of the Tamil Nadu Act 14 of 1982 in branding the detenu 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:

Sl.No.	Crime No.	Section of law	Date of occurrence
1.	K-10 Koyambedu Police Station Cr.No.1120/2018	294(b), 341, 307 IPC @ 147, 148, 341, 294(b), 307 IPC @ 147, 148, 341, 294(b), 302 IPC	25.10.2018

It is further alleged in the grounds of detention that the defacto complainant namely Mr.Mathivanan, son of Udaiyannan, resident of Koyambedu, Chennai, has lodged a complaint on the file of the Inspector of Police, K-10 Koyambedu Police Station stating that he was running a mobile tiffin shop and on 26.10.2018, at about 20.00 hours, while he was looking after the business, four persons came to his shop and abused him by using unparliamentary language and asked him to take out money from his cash bags. When the defacto complainant questioned them, they disclosed their identity and also threatened him with dire consequences by brandishing knife and in that process, also took a sum of Rs.3,500/- from his cash bag and when the defacto complainant raised an alarm, the public nearby gathered and they were also threatened with dire consequences and taking advantage of the situation, they fled away from the scene of occurrence. On the complaint given by the defacto complainant, the Inspector of Police of the above said Police Station has registered a case in Cr.No.1125/2018 for the commission of offences under Sections 294(b), 336. 397. 506(ii) IPC r/w Sec.3(i) TNPPDL Act 1992 (ground case) and took up the investigation. The detenu and other co-accused were arrested at about 11.30 hours on 27.10.2018 and they voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized. The detenu and the co-accused were produced before the Court of V Metropolitan Magistrate Court, Egmore, Chennai on 27.10.2018 and they were ordered to be remanded to judicial custody till 09.11.2018 and the remand period was further extended till 23.11.2018.

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, has already came to adverse notice in one case and on being satisfied that his acts are prejudicial to the maintenance of public order, 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 for the petitioner has drawn the attention of this Court to Paragraph No.4 of the grounds of detention and would submit that the Detaining Authority in order to derive the subjective satisfaction as to

the real and imminent possibility of the detenu in coming out on bail and indulge in activities which are prejudicial to the maintenance of public order and peace, has placed reliance upon two orders granting bail in CrI.M.P.NO.17395/2014 against Cr.No.809/2014 in F-1 Chintadripet Police Station and CrI.M.P.No.5599/2018 against Cr.No.350/2018 in P-5 M.K.B.Nagar Police Station and in the said similar cases, accused were granted bail and that apart, in respect of the petitioners in the said cases, they have not visited with any adverse cases and bad antecedents and as such, it cannot be cited as a similar cases and as such, the subjective satisfaction derived by the Detaining Authority is vitiated and hence prays for quashment of the impugned order of detention.

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, has rightly 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 for the petitioner, the similar cases referred in paragraph no.4 of the grounds of detention cannot be construed as similar cases for the reason that admittedly, the petitioners in the said cases, have not been visited with any adverse cases or any bad antecedents and however, in the case on hand, the detenu is having adverse case and bad antecedents and therefore, the Subjective satisfaction derived by the Detaining Authority is vitiated and hence on the sole ground, the impugned order of detention warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in No.1071/BCDFGISSSV/2018 dated 23.11.2018 is set aside and the detenu, namely Thiru.Mohan, aged 25 years, S/o Manikandan, who is now confined at Central Prison, Puzhal, Chennai is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Police,
Greater Chennai.

3.The Public Prosecutor
High Court, Madras.

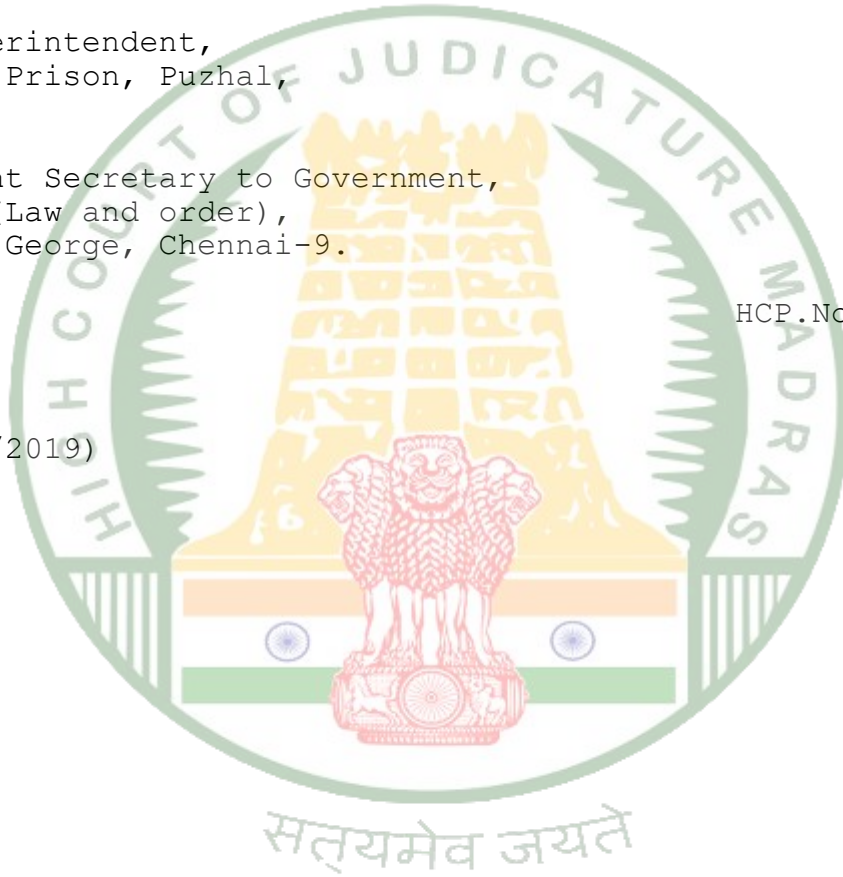
4.The Superintendent,
Central Prison, Puzhal,
Chennai.

5.The Joint Secretary to Government,
Public (Law and order),
Fort St.George, Chennai-9.

HCP.No.55 of 2019

PA (CO)

RRS (24/06/2019)



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