

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.200 of 2019

K.Priya

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Petitioner

Versus

1.The State of Tamil Nadu
Rep.by the Secretary to the Government
Prohibition & Excise Department
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai City
Vepery,
Chennai-600 007.

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Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus directing the respondents to produce the husband of the petitioner, Kitcha @ Krishnamurthy aged 32 years before this Honble Court, now confined in the Central Prison, Puzhal, Chennai and set him at liberty and to call for the records pertaining to the Memo No.771/BCDFGISSSV/2018 dated 28.08.2018 and set aside the same.

For Petitioner : Mr.C.K.M.Appaji

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

ORDER

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

The petitioner is the wife of the detenu who, vide impugned Order of Detention dated 28.08.2018 passed by the 2nd 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 cases:

<i>Sl.No.</i>	<i>Crime No.</i>	<i>Section of law</i>	<i>Date of occurrence</i>
1.	Kayar P.S.Cr.No.109/2017	302 IPC	22.08.2017
2.	J-11 Kannaki Nagar P.S Cr.No.264/2018	341, 294(b), 352, 392 r/w 397, 506 (ii) IPC	06.05.2018
3.	J-11 Kannaki Nagar P.S Cr.No.382/2018	341, 294(b), 352, 336, 427, 392 r/w 397, 506 (ii) IPC	09.06.2018
4.	J-11 Kannaki Nagar P.S Cr.No.412/2018	294(b), 324, 307, 506 (ii) IPC	18.06.2018

It is further alleged in the grounds of detention that the detenu has also involved in commission of two ground cases registered by J-11 Kannaki Nagar in Cr.Nos.437 of 2018 for the commission of offences under

Sections 147, 341, 294(b), 324 and 506(ii) IPC in the very same police station and yet another Cr.No.506 of 2018 for the commission of offence under Section 399 IPC and the offences in the ground case said to have been committed on 18.06.2018 and 14.07.2018. The detenu and the co-accused were arrested and produced before the Court of Judicial Magistrate, Alandur on 14.07.2018 and were ordered to be in judicial custody till 24.07.2018 and the remand period was extended till 04.09.2018.

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, have already came to adverse notice in four cases and his acts are prejudicial 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 the inner page No.6 of the impugned detention order and would state that the Detaining Authority has derived at the subjective satisfaction that the acts of the detenu are prejudicial to

public order and peace and relied upon five adverse cases, overlooking the fact that even as per the impugned order of detention, the detenu is also involved in two ground cases in Cr.Nos.437 and 506 of 2018 registered by J-11 Kannaki Nagar Police Station and therefore, the subjective satisfaction arrived by the Detaining Authority is vitiated and hence prays for quashment of the impugned order.

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 carefully considered the rival submissions and also perused the entire materials placed before it.

7. It is relevant to extract particular portion of Paragraph No.3 of the impugned order of detention:

“I am satisfied that Thiru.Kicha @ Krishnamurthy who is committing crimes has already came to adverse notice in five cases and in the ground case he has acted in a manner prejudicial to the maintenance of public order and as such he is a Goonda as contemplated under Section 2(f)

of the Tamil nadu Act 14 of 1982.”

As rightly pointed out by the learned counsel appearing for the petitioner apart from involving in five adverse cases, the detenu has also involved himself in two ground cases (above cited) and however, the Detaining Authority has taken into consideration only one ground case. In the considered opinion of this Court, the non-consideration of the involvement of the detenu in two ground cases would definitely vitiate the subjective satisfaction derived by the Detaining Authority 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 Memo No.771/BCDFGISSSV/2018 dated 28.08.2018 is set aside and the detenu namely Kitcha @ Krishnamurthy aged 32 years, now confined in the Central Prison, Puzhal, 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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M.SATHYANARAYANAN.,J

AND
M.NIRMAL KUMAR.,J
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To

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The State of Tamil Nadu
Prohibition & Excise Department
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2.The Commissioner of Police,
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3.The Public Prosecutor
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