

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.304 of 2019

Khushruba

..Petitioner

Versus

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

2.The Commissioner of Police,
Detaining Authority
Coimbatore City.

..Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus call for the entire records, relating to her husband's detention under Tamil Nadu Act 14 of 1982, vide detention order, dated 09.05.2018 on the file of the Second respondent herein made in proceedings C.No.50/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce her husband namely Yasar Ali, son of Haji Uzath Ali, aged 47 years before this Court and set her husband at liberty from detention now he is detained at Central prison, Coimbatore.

For Petitioner : Mr.C.C.Chellappan

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 09.05.2018 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:

Sl.No.	Crime No.	Section of law	Date of occurrence
1.	Coimbatore City, B-2 R.S.Puram Police Station Cr.No.1066/2017	170, 420 IPC	08.10.2017
2.	Coimbatore City, E-3 Saravanampatty Police Station Cr.No.816/2017	420 IPC	14.10.2017
3.	Coimbatore city, D-1 Ramanathapuram Police Station Cr.No.9/2018	420 IPC	04.01.2018
4.	Coimbatore City, B-2 R.S.Puram Police Station Cr.No.101/2018	420 IPC	25.01.2018

It is further averred in the grounds of detention that the Inspector of Police, B-3 Variety Hall Road Police Station, Coimbatore City on the basis of the complaint has registered a case in Cr.No.155/2018 under Sections 395 r/w 397 IPC (Ground case) and took up the investigation. The detenu was arrested on 01.02.2018 and voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized. The detenu was produced before the Court of Judicial Magistrate No.V, Coimbatore on 02.02.2018 and was ordered to be remanded to judicial custody till 15.02.2018 and the remand period was extended till 15.05.2018.

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 come to adverse notice in four cases and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned orders 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 the attention of this Court to Paragraph No.8(1) of the ground of detention and would submit that the Detaining Authority has noted that in the first and fourth adverse cases, no bail applications have been filed, however in the third adverse where involved in the commission of similar offence, bail was granted to the detenu and therefore, the inferred that there is a real possibility for filing bail applications in the first and fourth adverse cases and coming out on bail and for

that purpose placed reliance upon the similar case and the admissible details of the similar cases have not been given in the said paragraph and as such, the impugned order of detention 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 derived the subjective satisfaction and 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. As rightly pointed out by the learned counsel appearing for the petitioner that though the Detaining Authority has derived the subjective satisfaction in similar cases, the concerned Court grants bail after a lapse of certain time and failed to advert to the relevant materials in respect of the similar cases, and hence the same would exhibit lack of application of mind on the part of the Detaining Authority as to the real and imminent possibility of the detenu by filing the bail application in first and third adverse cases and the said infirmity would definitely vitiate the impugned order of detention and hence on the sole ground, it warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in C.No.50/G/IS/2018 dated 09.05.2018 is set aside and the detenu namely Yasar Ali, son of Haji Uzath Ali, aged 47 years, now confined in Central prison, Coimbatore is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

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

2.The Commissioner of Police,
Detaining Authority
Coimbatore City.

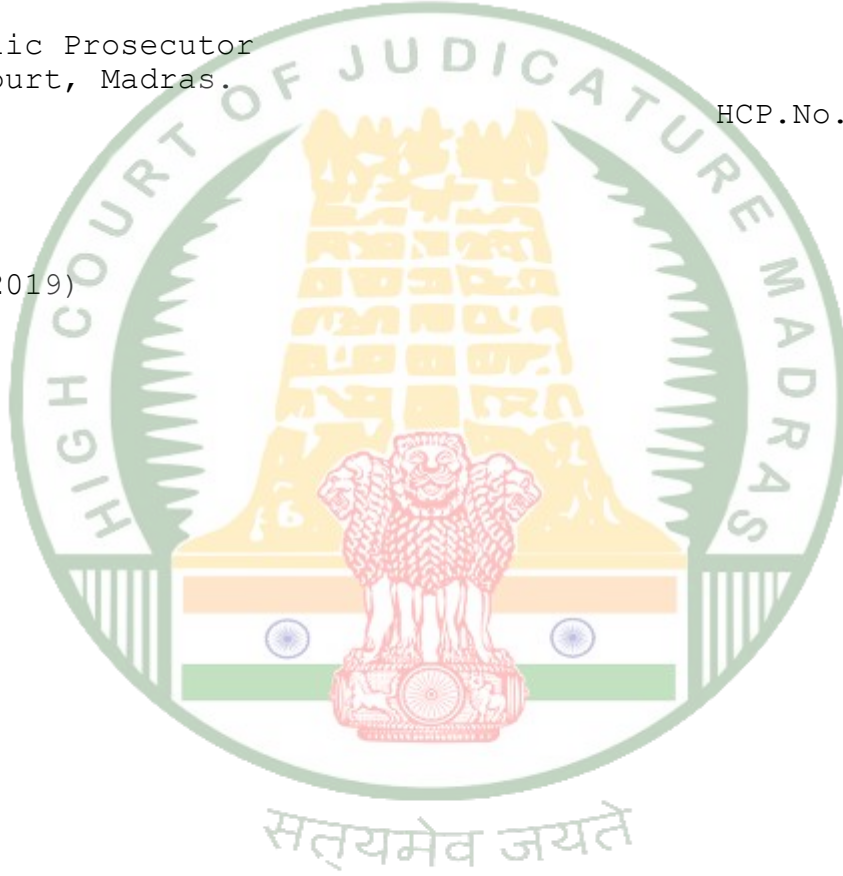
3.The Superintendent
Central Prison Coimbatore.

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

5.The Public Prosecutor
High Court, Madras.

HCP.No.304 of 2019

MG (CO)
SP (29/05/2019)



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