

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2371 of 2018

Mrs.Govindammal ... Petitioner

-vs-

- 1.The Commissioner of Police,
The Office of the Commissioner of Police,
Greater Chennai, Egmore,
Chennai-600 008.
- 2.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records for the records of the first respondent culminating with the order of detention bearing No.845/BCDFGISSSV/2018 dated 17.09.2018 passed by the first respondent herein detaining the petitioner's son Thiru.Elumalai under Act XIV of 1982 and quash the same and direct the respondents to produce the body of the detenu, Thiru.Elumalai, S/o. Venkatesan, Male, aged about 25 years before this Hon'ble Court, now detained in the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Mohanraj

For Respondents: Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

[Order of the Court by M.Sathyanarayanan, J.]

The petitioner is the mother of the detenu viz., Thiru.Elumalai, Son of Venkatesan, who vide impugned order dated

17.09.2018 in No.845/BCDFGISSSV/2018 passed by the first respondent, was branded and detained as "Goonda" as contemplated under Section 2(f) of the 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 (Tamil Nadu Act 14 of 1982). Challenging the legality of the said detention order, the present Habeas Corpus Petition is filed.

2. A perusal of the materials placed before this Court would disclose among other things that the detenu, on account of previous enmity, murdered the husband of one Tmt.Sathya / defacto complainant. On 23.08.2018 at about 04.30 hours, the detenu went to Adi Parasakthi Ellaiamman Temple and waked up the husband of the defacto complainant and put a grinding stone on his face and upon hearing alarm, wife of the detenu came and saw that the detenu was stabbing on her husband's chest on the right side with a knife. On seeing the defacto complainant and others, the detenu fled away from the scene of occurrence.

3. The Sponsoring Authority / Inspector of Police, Law and Order, H-1, Washermenpet Police Station, upon receipt of the complaint from the defacto complainant, has registered a case in Crime No.786 of 2018 under Section 302 I.P.C. and commenced the investigation and effected the arrest of the detenu at 13.00 hours on 23.08.2018. The detenu voluntarily came forward to give confession statement, which was recorded in the presence of witnesses and based on his confession statement, certain incriminating articles were seized and the detenu was produced before the learned XV Metropolitan Magistrate, George Town, Chennai on the same day and lodged at Central Prison, Puzhal, Chennai as remand prisoner till 06.09.2018 and the remand was extended till 20.09.2018.

4. The Detaining Authority, on being satisfied that the detenu has already come to adverse notice and in the ground case he has acted in a manner prejudicial to the maintenance of public order, has branded him as "Goonda" and detained him by passing the impugned Detention Order dated 17.09.2018 and challenging the legality of the same, the present Habeas Corpus Petition is filed.

5. The learned counsel appearing for the petitioner would submit that admittedly the alleged occurrence took place at the early morning hours on 22.08.2018 and it is a case of 302 I.P.C. simplicitor and in the absence of any material to show that public order has been affected, the impugned order of detention

cannot sustain and would further add that it is a case of solitary incident and as such, the Detention Order cannot be clamped by invoking Tamil Nadu Act 14 of 1982.

6. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents would submit that the motive and manner in which the murder has been committed shock the conscience of the respondents and the Detaining Authority, after thorough consideration of the materials, has arrived at the substantive satisfaction that that detenu has acted in a manner prejudicial to the maintenance of public order and rightly clamped the order of detention and therefore, prays for dismissal of this petition.

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

8. A perusal of the materials placed would indicate that on account of the alleged occurrence, there was no panic among residents of the locality and no material whatsoever has been placed before this Court to show that public order in the area has been affected. It is to be pointed out at this juncture that it is a case of solitary incident and in the absence of any tenable material to show that public order was affected on account of the alleged incident, this Court is of the considered view that the subjective satisfaction derived by the Detaining Authority/first respondent is vitiated.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the first respondent in No.845/BCDFIGSSSV/2018 dated 17.09.2018 is set aside. The detenu viz., Thiru Elumalai, S/o.Venkatesan aged about 25 years, confined at Central Prison, Puzhal, Chennai is directed to be released forthwith unless his custody/detention is required in connection with any other case.

सत्यमेव जयते

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Commissioner of Police,
The Office of the Commissioner of Police,
Greater Chennai, Egmore, Chennai-600 008.
- 2.The Secretary to Government,
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 3.The Superintendent of Prisons
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2371 of 2018

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srg 29/03/2019



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