

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2409 of 2018

Muthumari

..Petitioner

Versus

1.The Secretary to Government of Tamil Nadu
Prohibition & Excise Department (Home)
Secretariat, Fort St.George,
Chennai-60 009,

2.The District Collector & District Magistrate,
Perambalur Town & Taluk,
Perambalur District.

3.The Inspector of Police,
Perambalur Police Station,
Perambalur District.

... 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 Cr.M.P.No.27/2018 dated 26.08.2018 passed by the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce the detenu is her on Yesudoss, son of Tamilselvan, aged 23 years, has been detained under Act 14 of 1982 as Goondas, who is now confined at Central Prison, Puzhal, Chennai before this Court.

For Petitioner : Mr.J.Milton Arul Rajendran

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

ORDER

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

The petitioner is the mother of the detenu and challenging the legality of the impugned order of detention dated 26.08.2018 passed by the 2nd respondent in and by which, the detenu has been branded as "Goonda" and detained under the provisions of the Tamil Nadu Act 14 of 1982, came forward to file this Habeas Corpus Petition.

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

S.No	Police Station Cr.No.Date	Sections implicated	Date
01.	Perambalur District Perambalur PS Crime No.108/2018	147, 148 and 302 altered into 147, 148, 120 (b), 302 IPC	14.02.2018

The grounds of detention further reads that on 25.7.2018 at about 03.00, before the Sub Inspector of Police, Perambalur, the defacto complainant namely Murugesan appeared and lodged a complaint stating among other things that the detenu along with others came to the LKS lodge to consume liquor and created nuisance and he went to LKS lodge and questioned the drunkards about their acts and all of them threatened the defacto complainant with dire consequences and except him others fled away. Suddenly, the detenu and another restrained the defacto complainant and the accused namely Soory assaulted him with Beer Bottle and caused head injury and all of them threatened and chased the general public by brandishing their weapons and in this process, broken up the car windscreen of the neighbours. The defacto complainant went to the Government Hospital, Perambalur for treatment and thereafter, lodged the said complaint, based on which, the 3rd respondent has registered a case in Crime No.480 of 2018 for the commission of offences under Sections 147, 294 (b), 323, 324, 506(ii) and 307 IPC r/w 3 of T.N.P (P.D&L) Act, 1992. The detenu was arrested on 25.07.2018 and in pursuant to the admissible portion of the confession statement, incriminating articles were seized and produced before the Court of Judicial Magistrate, Perambalur and he was remanded to judicial custody till 08.08.2018 and it was further extended till 23.08.2018 and lastly, his remand period was extended to 06.09.2018. The Detaining Authority, on consideration and appreciation of the materials, arrived at the subjective satisfaction that the detenu has committed the crime and also formed an opinion that if he comes out on bail, it will

be prejudicial to the maintenance of the public order and further recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities and accordingly clamped the impugned order of detention and challenging the same, the present Habeas Corpus Petition is filed.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to paragraph No.5 of the impugned order of detention and would submit that the detenu, in respect of his arrest under the ground case, has filed a petition for bail in Crl.M.P.No.697 of 2018 on the file of the Court of Principal District and Sessions Court, Perambalur and it was dismissed on 01.08.2018 and though, reliance has been placed upon the same, copy of the same has been furnished to the detenu in the booklet supplied and in the absence of the same, he was prevented from making effective representation for revocation of the order of detention and that apart, non consideration of the said materials would also vitiate the subjective satisfaction derived by the Detaining Authority and prays for quashment of the same.

4. Per contra, Mr.C.Iyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority on consideration and proper appreciation of materials has rightly reached the subjective satisfaction to detain him and clamped the order of detention and prays for dismissal of this petition.

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

6. As rightly pointed out by the learned counsel appearing for the petitioner, the order dated 01.08.2018 passed by the Principal District and Sessions Court, Perambalur in dismissing the Crl.M.P.No.697 of 2018 filed by the detenu in connection with the ground case, which has been relied upon have not been furnished to the detenu. In the considered opinion of this Court, in the absence of the same, the detenu is prevented from making the effective representation and since, it is a relied upon material, it ought to have been furnished to him also and the said infirmity, in the considered opinion of this Court, will definitely vitiate the order of detention and hence, the impugned order of detention is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in Cr.M.P.No.27/2018 dated 26.08.2018 is set aside. The detenu viz., Yesudoss, Son of Tamilselvan, confined at Central Prison, Puzhal Prison is directed to be released forthwith unless his custody/detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government of Tamil Nadu
Prohibition & Excise Department (Home)
Secretariat, Fort St.George,
Chennai-600 009,
- 2.The District Collector & District Magistrate,
Perambalur Town & Taluk,
Perambalur District.
- 3.The Inspector of Police,
Perambalur Police Station,
Perambalur District.
- 4.The Public Prosecutor,
Madras High Court.
- 5.The Superintendent, सत्यमेव जयते
Central Prison, Puzhal,
Chennai (In duplicate for communication to the detenu)
- 6.The Joint Secretary to Government,
of Tamil Nadu, Public Law and Order,
Secretariat, Fort St. George, Chennai-9.

HCP.No.2409 of 2018

gp[co]
srg 26/03/2019