

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2416 of 2018

G.Devika Ananya

.. Petitioner

-Vs-

1.The State of Tamil Nadu
Rep.by its Secretary to Government (Home),
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Police, Greater Chennai
Office of the Commissioner
of Police (Goondas Section)
Vepery, Chennai-7.

..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 of pertaining to the order of detention dated 28.09.2018 passed by the 2nd respondent in BCDFGISSS.NO 901/2018 and quash the same and produce the detenu Nagamani aged about 42 years S/o Solai before this Court and set him at liberty and the detenu now has been confined at Central prison, Puzhal.

For Petitioner : Dr.S.Manoharan

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

ORDER

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

The petitioner, who claims to be the friend of the detenu and he is also a resident of Srigruru Saneeshwara Swamy Koil, came forward to file this Habeas Corpus Petition challenging the

order of Detention dated 28.09.2018 passed by the 2nd respondent under Section 3 (1) 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), branding the detenu as 'Goonda'.

2. A perusal of the ground of detention dated 28.09.2018 would disclose among other things that the detenu came to adverse notice in the following cases:

SI. No	Police Station and Crime No.	Section of Law	Date
1.	J-12 Kanathur Police Station Cr.No.226/2018	457, 380 IPC	23.03.2018
2.	J-8 Neelankarai Police Station Cr.No.356/2018	457, 380 IPC	25.03.2018
3.	J-8 Neelankarai Police Station Cr.No.420/2018	457, 380 IPC	08.04.2018
4.	J-8 Neelankarai Police Station Cr.No.727/2018	457, 380 IPC	01.06.2018
5.	J-12 Kanathur Police Station Cr.No.529/2018	457, 380 IPC	16.08.2018

3. It is further averred that the defacto complainant namely Thiru.Baskar S/o. Shanmugam residing at No.1/1372, 5th Street, Bethel Nagar, Injambakkam, Chennai-115 at about 07.00 hours on 29.08.2018 was proceeding to Kanathur Bazaar and at that time, a car bearing Reg.No.KA-03-MH-7229 came there and a person, who got down from the car, caught hold of the complainant's hands and when the complainant raised hue and cry, brandishing knife he threatened him with dire consequences and asked the associate, namely Nagamani to snatch the chain from defacto complainant. The said person snatched the chain and when the defacto complainant raised alarm, public gathered on hearing the alarm raised by him and the public was also threatened by the accused with dire consequences and both of them fled away from the scene of occurrence. The Inspector of Police, J-12 Kanathur Police Station based on the complaint given by the defacto complainant, registered a case in Cr.No.557 of 2018 for the alleged commission of offences under Sections 341, 323, 336, 397 and 506 (ii) IPC and investigation is on.

4. The detenu / one of the accused was arrested at about 10.00 hours on 29.08.2018 and during the course of investigation, he admitted his involvement in the adverse cases also. Based on the admissible portion of the confession

statement, some incriminating articles were also seized. The detenu was also arrested in connection with the adverse cases also. The detenu was produced before the Court of Judicial Magistrate, Alandur, Chennai on 29.08.2018 and he was ordered to be remanded to judicial custody till 11.09.2018 and it was also extended upto 09.10.2018.

5. The Detaining Authority, on perusal and consideration of the materials, has formed a subjective satisfaction as to the involvement of the detenu in five adverse cases as well as in the present case (ground case), branded him as "Goonda" under Tamil Nadu Act 14 of 1982 and making challenge to the said order, the present Habeas Corpus Petition has been filed.

6. Dr.S.Manoharan, learned counsel appearing for the petitioner had drawn attention of this Court to paragraph No.4 of the grounds of detention and would submit that for the purpose of deriving the subjective satisfaction as to the imminent possibility of the detenu in coming out of the bail, the Detaining Authority supposed to have relied upon the following cases namely S-15, Selaiyur Police Station Cr.No.1843 of 2017 under Sections 454, 380 IPC as well as granted bail in Crl.M.P.No.994 of 2018 and a case in Cr.No.324 of 2018 registered by R-2, Kodambakkam Police Station for the commission of offence under Sections 341, 294 (b), 336, 323, 427, 397 and 506 (ii) and bail granted in Crl.M.P.NO.8606 of 2018.

7. The primordial submission of the learned counsel appearing for the petitioner by drawing attention of this Court to page nos.467 and 555 of the booklet and would submit that as far as the case in Cr.No.1843 of 2017 registered by S-15, Selaiyur Police Station, it is only for 454 IPC and whereas the ground case is imposed for the commission of offence under Section 457 of IPC which attracts some years of Rigorous Imprisonment and therefore, it cannot be construed as a similar case and the Detaining Authority has failed to apply his mind to the said material fact and as such the impugned order is vitiated.

8. Per contra, Mr.C.Iyyapparaj, learned Additional Public prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind to the entire materials, has rightly clamped the order of detention and prays for dismissal of this petition.

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

10. Section 454 IPC is punishable with imprisonment of

either description for a term which may extend to three years and shall also be liable to pay fine, subject to the term of imprisonment, which may extend to ten years. As per Section 457 IPC, in the event of accused lurking house-trespass or house breaking by night in order to commit offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years and shall also liable to pay fine and the term of imprisonment may extend to 14 years.

11. As rightly pointed out by the learned counsel appearing for the petitioner, the punishment imposed for the commission of offence under Section 457 is more severe in nature, whereas as far as adverse cases are concerned, the detenu said to have implicated for the commission of offences under Section 457 IPC and those cases have been taken into consideration by the Detaining Authority in respect of S-15, Selaiyur Police Station in Cr.No.1843 of 2017 pertains only to Section 454 IPC and the ground case is not a similar case as that of the five adverse cases. In the considered opinion of this Court, the Detaining Authority has failed to advert to the said vital material fact and as such the subjective satisfaction is vitiated and on the same ground, impugned order of detention warrants interference.

12. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the 2nd respondent in BCDFGISSV.NO 901/2018 dated 28.09.2018 is set aside and the detenu is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Secretary to Government (Home),
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police, Greater Chennai
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai-7.

3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai- 9.
5. The Public Prosecutor
High Court, Madras.

HCP.No.2416 of 2018

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