

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2397 of 2019

Kesavan

..Petitioner

Versus

1.The State Government rep.by
The Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The District Magistrate and District Collector,
Namakkal District, Namakkal. .. 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 pertaining to detention order dated 30.05.2018 in C.M.P.No.12/Goonda/2018/M1 passed by the second respondent and direct him to produce the body of the detenu namely Kesavan, son of Mathesh before this Court and set him at liberty.

For Petitioner : Mr.S.Pushpakaran
For Respondents: Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

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

The detenu himself is the petitioner herein and challenging the legality of the detention order dated 30.05.2018 passed by the 2nd respondent by invoking Section 3(2) 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 14/1982) and Section (2) of Section 3 of the said Act, came forward to file this 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.	Nallur PS Cr.No.115/2018 D.O.20.04.2018	392, 397 IPC	21.04.2018

The grounds of detention further reveals that on 07.04.2018, the Sub Inspector of Police, Velagoundampatty, who was on duty, received an intimation from Maruthi Hospital and went there and enquired one Muthusamy, son of Peria Gounder, Periya Thottam, Namakkal District and recorded the statement, wherein he would state among other things that in connection with the business, he went to Morpalayam Market, and after completing the same, took food outside and came to the house at about 08.00 p.m and later on kept the amount in the house, locked it and retired to bed. At about 11.00 pm on the same day, he came out for the purpose of answering the nature call and all of a sudden, some persons pressed him and beaten him and on opening his eyes, he found that there were 7 persons and he was tied and they were beaten him and his mouth was clothed. Subsequently, the amount kept by him was stolen so also 10 sovereigns of jewels. In this regard, he has lodged a complaint, based on which a case in Crime No.110 of 2018 was registered under Section 457, 395 r/w 397 IPC in Velagoundampatty Police Station.

3. Later on, the Inspector of Police, went in search of the absconding accused and saw a vehicle near Manathi Pirivu road on Tiruchengode road at about 07.00 A.M on 21.04.2018 and on suspicion found that 7 persons who came in three bikes on seeing the police party attempted to flee away and they were nabbed and one of them is the detenu. All of them were arrested on 21.04.2018 and confession statements were also recorded in the presence of witnesses and based on the confession statements, incriminating articles were also seized. The detenu was produced before the Court of Judicial Magistrate No.1, Namakkal in connection with the ground case and he was remanded to judicial custody upto 31.05.2018. The application filed by him for bail was also dismissed on 10.05.2018 and he moved CrI.O.P.No.14049 of 2018 before this Court and the same is pending. The Detaining Authority, on being satisfied with the adverse case of detention, 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.

4. The learned counsel appearing for the petitioner would submit that even prior to the impugned order of detention, petitioner has submitted pre-detention representation dated 05.05.2018, which was came to be rejected on 29.05.2018 and

those documents are available in Page Nos.130 and 131 of the booklet and however, the impugned order of detention does not refer to the submission and disposal of the pre-detention representation before clamping the impugned order of detention and the subjective satisfaction arrived by the Detaining Authority is vitiated and prays for quashment of the impugned detention order.

5. Mr.C.Iyapparaj, learned Additional Public prosecutor appearing for the State would submit that that Detaining Authority, after due and proper application of mind has rightly rejected the pre-detention representation and clamped the impugned order and prays for dismissal of this petition.

6. This Court paid its best attention to the rival submission and also perused the materials placed before it.

7. In Page No.130 and 131 of the booklet cited, the submission of pre-detention representation dated 05.05.2018 and the order of rejection dated 29.05.2018 are available and however, the detenu has failed to advert to the said fact. In the considered opinion of this Court, the right of representation is given to the detenu. Therefore, the Detaining Authority is under obligation to refer the same and also to the manner of disposal and however detention order did not reflect the same. In the considered opinion of this Court, not referring the submission and disposal of the pre-detention representation and the ground of case will vitiate the order of detention and on the sole ground, the impugned order of detention is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in C.M.P.No.12/Goonda/2018/M1 dated 30.05.2018 is set aside. The detenu viz., Kesavan, Son of Mathesh, confined at Central Prison, Salem is directed to be released forthwith unless his custody/detention is required in connection with any other case.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1.The Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The District Magistrate and District Collector,
Namakkal District, Nammakkal.

3.The Public Prosecutor,
Madras High Court.

4.The Superintendent,
Central Prison,
Salem.

5.The Joint Secretary to the Government,
Public (Law and Order),
Fort St.George,
Chennai-9.

+1cc to Mr. S.Pushpakaran, Advocate, S.R.No. 14006

HCP.No.2397 of 2019

GN(01/04/2019)



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