

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

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

H.C.P.No.2483/2018

Sathya .. Petitioner

vs.

1. The State of Tamil Nadu rep.by the
Secretary, Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.

2. The District Collector & District Magistrate
O/o.The District Collector & District Magistrate
Kancheepuram District. .. Respondents

Prayer :

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order in BCDFGISSSV No.58/2018 dated 13.08.2018 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Vinoth, S/o.Gajendran, aged about 26 years the detenu now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's husband Vinoth, S/o.Gajendran, aged about 26 years the detenu herein, at liberty.

For Petitioner.. Mr.D.Gopi Krishnan

For Respondents.. Mr.C.Iyyappa Raj, APP

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 13.08.2018 passed by the 2nd respondent, in and by which, her husband, the detenu herein, has been branded as a ''Goonda'' under the provisions of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders,

Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the present petition is filed.

2 As per the Grounds of Detention dated 13.08.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Sunguvarchatram PS Cr.No.447/2017	379 IPC @ 379 r/w 34 IPC
2	Sunguvarchatram PS Cr.No.177/2018	457, 380 IPC
3	Sunguvarchatram PS Cr.No.223/2018	379 IPC

3 It is further averred that the defacto complainant, who was working as a Supplier in a TASMACH Shop in Pondur Village near Sriperumbudur, at about 1.00 pm., on 02.07.2018, was walking at Adhiparasakthi Nagar and at that time, two persons, came in Suzuki Motorcycle, waylaid him and abused him in filthy language and also asked him to take out the money and at that juncture, also brandished a knife and a cash of Rs.1815/- was stolen. The defacto complainant, has lodged a complaint based on which, the Sub Inspector of Police, Sriperumbudur Police Station, registered a case in Cr.No.396/2018 for the commission of the offences u/s.341, 294[b], 323, 397 and 506[ii] IPC [ground case] and took up the case for investigation. Later on, he effected the arrest of the detenu on 03.07.2018 at about 10.00 hours and he voluntarily came forward to give a confession statement based on which, the Hero Honda Splendor Motorcycle which was said to have been used by him and other accused, was seized and he was produced before the Court of District Munsif-cum-Judicial Magistrate, Sriperumbudur on 03.07.2018 and was ordered to be remanded to judicial custody till 17.07.2018 and at present, he is lodged at the Central Prison, Puzhal, Chennai and the Detaining Authority, on consideration and application of mind to the material placed, found that the acts of the detenu in habitually indulging in acts of using filthy language, waylaiding and committing theft, house breaking etc., would affect the public tranquillity and thereby, his acts are prejudicial to the maintenance of public peace and order and

had derived at the subjective satisfaction and clamped the impugned order of detention, branded him as a 'Goonda' and detained him under the Tamil Nadu Act 14 of 1982 and challenging the legality of the same, the present habeas corpus petition is filed.

4 The learned counsel for the petitioner has drawn the attention of this Court to the tabular column in the Grounds of detention and would submit that after the detenu was arrested in the ground case through Prisoner of Transfer Warrant, he was also arrested in connection with the adverse cases Nos.2 and 3 and however, in paragraph No.5 of the Grounds, the Detaining Authority while dealing with the aspect as to the detenu coming out on bail in the ground case, he has stated that there is imminent possibility of the detenu coming out on bail in the said case and indulging in similar activities which are prejudicial to the maintenance of public peace and order, has not at all taken into consideration of the fact of the detenu's arrest and judicial custody in the adverse cases Nos.2 and 3 and the same would vitiate the impugned order of detention and prays for quashment of the same.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

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

7 As rightly pointed out by the learned counsel for the petitioner, the Detaining Authority, while arriving at the subjective satisfaction as to the detenu coming out on bail in the ground case and indulging in similar activities which would cause prejudice to the maintenance of public peace and order, has not at all taken into consideration, the arrest and custody of the detenu in the 2nd and 3rd adverse cases. In the considered opinion of the Court, non consideration of the said relevant material would definitely vitiate the impugned order of detention.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 13.08.2018 made in Memo No.58/BCDFGISSSV/2018 is hereby set aside. The detenu, viz., Vinoth, son of Gajendran, aged about

26 years, who is now confined in the Central Prison, Puzhal, Chennai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary, State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
2. The District Collector & District Magistrate
O/o.The District Collector & District Magistrate
Kancheepuram District.
3. The Public Prosecutor,
Madras High Court, Madras.
4. The Superintendent
Central Prison, Puzhal, Chennai.
5. The Joint Secretary to Government Public
(L & O) Fort St.George,
Chennai-9

MP (CO)
CS/03/04/2019

H.C.P.No.2483/2018

सत्यमेव जयते

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