

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.2491/2018

Anjalai

.. 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 Commissioner of Police
Greater Chennai,
Vepery, Chennai 600 007.

.. 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 Memo No.898/BCDFGISSSV/2018 dated 28.09.2018 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 son Thiru Gopi @ Gopinath, son of Raja, aged about 22 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Thiru Gopi @ Gopinath, son of Raja, aged about 22 years, the detenu herein, set him liberty.

For Petitioner .. Mr.R.Muthukumar
For Respondents .. Mr.C.Iyyappa Raj, APP

ORDER

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

The mother of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 28.09.2018 passed by the 2nd respondent, in and by which, her son, 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 28.09.2018 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	P1 Pulianthope PS Cr.No.2045/2016	450. 307 IPC
2	P1 Pulianthope PS Cr.No.2063/2016	341, 294[b], 392, 397, 336, 506[ii] IPC r/w 34 IPC
3	P3 Vyasarpadi PS Cr.No.559/2018	341, 397, 506[ii] IPC
4	P3 Vyasarpadi PS Cr.No.563/2018	341, 294[b], 336, 397, 506 [ii] IPC read with section 3 of TNPPDL Act, 1992.
5	P1 Pulianthope PS Cr.No.476/2018	147, 148, 294[b], 341, 323, 324, 307, 506[ii] IPC

3 It is further averred that the defacto complainant, who is a painter by profession, has received a sum of Rs.3000/- from his customers and was proceeding to Broadway at about 8.00 hours on 04.08.2018 and when he was walking near the junction of Dr.Ambedkar Law College Road and Brightons Road, the detenu along with 9 other accused had waylaid him and abused him in filthy language and also pulled his shirt and the detenu and 5 others, brandished knives and snatched Rs.3000/- from his pocket and when the complainant raised an alarm, public gathered and they were also threatened with dire consequences and subsequently, ran away from the scene of crime. The defacto complainant, had lodged a complaint based on which, the Inspector of Police, P-1 Pulianthope Police Station, registered a case in Cr.No.477/2018 for the commission of the offences u/s.147, 148, 341, 294[b], 323, 392, 397, 336 and 506[ii] IPC [ground case] and took up the case for investigation. Later on, he effected the arrest of the detenu and other accused on 04.09.2018 at about 13.00 hours and based on the admissible portion of the voluntary confession statements, incriminating articles were seized. The intimation of arrest of the detenu was also informed to the petitioner and all the arrested persons were produced before the Court of Metropolitan Magistrate, Egmore, Chennai on 04.09.2018 and was ordered to be remanded till 18.09.2018 and thereafter, their remand period was extended till 03.10.2018 and the Detaining Authority, on being satisfied

that the offences for which the detenu and others are charged, are serious offences and that the act of the detenu in committing crimes already came to the adverse notice through the adverse cases and that he acted in a manner prejudicial to the maintenance of the public order, has derived at the subjective satisfaction, branded him as a 'Goonda' and detained him under the Tamil Nadu Act 14 of 1982 vide impugned order 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 Grounds of Detention, in particular, inner page No.7 as well as to page No.187 of the Booklet supplied to the detenu and would submit that originally the detenu, after arrest, was produced before the jurisdictional Magistrate Court on 04.09.2018 and was remanded upto 18.09.2018 and however, only on 19.09.2018, he was produced through Video Conference before the jurisdictional Magistrate and his remand was extended upto 03.10.2018 and in any event, the remand ought to have been extended from 18.09.2018 and since it was not done and that the Detaining Authority has failed to advert his mind to the relevant materials placed in page No.187 of the Booklet, the impugned order of detention is vitiated 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 detenu was initially remanded to judicial custody till 18.09.2018 vide order of remand dated 04.09.2018 passed by the jurisdictional Magistrate and however, he was produced for remand extension through Video Conference only on 19.09.2018 and the learned Magistrate has extended the remand till 03.10.2018 and the said order is available at page No.187 of the Booklet. In the considered opinion of the Court, the said document is a relied upon document and it has not been considered by the 2nd respondent / Detaining Authority and in the absence of consideration of the same, the subjective satisfaction arrived at by the Detaining Authority as to the imminent possibility of the detenu coming out on bail and indulging in acts which are prejudicial to the maintenance of the public order, in the considered opinion of the Court, is nothing but a non-application of mind and hence, on this sole

ground, the detention order, impugned herein, is vitiated and is liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 28.09.2018 made in Memo No.898/BCDFGISSSV/2018 is hereby set aside. The detenu, viz., Gopi @ Gopinath, son of Raja, aged about 22 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-VI)

//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 Commissioner of Police
Greater Chennai, Vepery, Chennai 600 007.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent
Central Prison, Puzhal, Chennai.
- 5.The Joint Secretary to Government,
Public (Law and Order)
Fort St. George,
Chennai-9.

AP(CO)
SSM(29/03/2019).

H.C.P.No.2491/2018

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