

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
H.C.P.No.2532/2018

Ganga

.. Petitioner

vs.

1.The State of Tamil Nadu rep.by its
Secretary to Government
[Home] Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The District Collector and District Magistrate
Erode District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the body of the petitioner's son namely Arunkumar, aged about 24 years, who is detained in Central Prison, Coimbatore before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order made in Cr.MP.No.23/Goonda/2018/C1 dated 05.10.2018 on the file of the 2nd respondent and quash the same.

For Petitioner .. Mr.I.C.Vasudevan

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 05.10.2018 passed by the 2nd respondent, in and by which, the detenu 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 05.10.2018 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	Kavundapadi PS Cr.No.40/2018 dated 25.01.2018	457, 380 IPC
2	Kavundapadi PS Cr.No.358/2018 dated 06.08.2018	393 IPC

3 It is further averred that on 07.08.2018 at about 8.00 hours, the Sub Inspector of Police attached to Kavundapadi Police Station was on duty and at that time, one Silambarasan appeared and lodged a complaint stating among other things that when he was riding his two-wheeler, bearing registration No.TN-36-A-0232 for his own purpose and when he was nearing Dhanapal Poultry Farm, at about 7.45 hours, a person aged about 24 years came in a two-wheeler in the opposite direction and waylaid him and put the knife on his neck and threatened him with dire consequences and also forcibly snatched two sovereign gold chain and when the complainant raised alarm, public gathered there and he also threatened them with dire consequences and fled away from the scene. The said official, on the basis of the complaint lodged by the complainant, registered a case in Cr.No.360/2018 for the commission of the offences u/s.392 read with 397 IPC [ground case] and took up the case for investigation. Later on, the Inspector of Police effected the arrest of the detenu on 07.08.2018 at about 12.30 hours, and he voluntarily came forward to give confession statement, which was recorded in the presence of two witnesses and in pursuant to the admissible portion of the confession statement, incriminating articles were recovered. The detenu was produced before the Court of Judicial Magistrate No.2, Gobichettipalayam, on 07.08.2018 and he was remanded to judicial custody till 21.08.2018 and his remand period was further extended till 17.10.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the repeated acts of the detenu in contravention of the provisions of the Indian Penal Code has resulted in acts which are prejudicial to the maintenance of the public order and branded him as a ''Goonda'' and detained him under the provisions of the Tamil Nadu Act 14 of 1982 and challenging the legality of the same, the present petition is filed.

4 The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.5 of the Grounds of Detention and would submit that the detenu had filed application for bail in the first adverse case and it came to be dismissed

on 28.08.2018 and he filed bail applications for the 2nd adverse case as well as for the ground case, which were also came to be dismissed on 11.09.2018 and observed that there is real possibility of the detenu coming out on bail by filing another bail application in future before the concerned Court. Further attention of this Court was also drawn to the said paragraph wherein the Detaining Authority has observed that "'if Thiru Arunkumar filed bail petitions in the above said cases before the concerned Court in future and on coming out on bail again he will indulge in such activities.....'" . The primordial submission made by the learned counsel is that despite the fact that the bail applications filed by him in two adverse cases and in the ground case came to be dismissed, to say that there is possibility on the part of the detenu to file similar applications in future, no material whatsoever has been placed before the Detaining Authority and in the absence of such vital material, the subjective satisfaction derived by the Detaining Authority as to the real and imminent possibility of the detenu in filing bail application and coming out on bail is no longer available and therefore, 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, no material whatsoever has been placed before the Detaining Authority for arriving at the subjective satisfaction as to the real possibility of the detenu coming out on bail if he files such applications and in the absence of such a vital material, the subjective satisfaction on the part of the Detaining Authority as to the real and imminent possibility of the detenu coming out on bail and indulging in similar kind of activities which are prejudicial to the maintenance of public order, is vitiated and hence, on this sole ground, the detention order, impugned herein, 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 05.10.2018 is hereby set aside. The detenu, viz., Arunkumar, son of [late] Arumugam, aged about 24 years, who is now confined in

the Central Prison, Coimbatore, 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(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government
State of Tamil Nadu
[Home] Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector and District Magistrate
Erode District.
- 3.The Superintendent
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9 .
- 5.The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.2532/2018

KK(CO)
CSL/29.03.2019

सत्यमेव जयते

WEB COPY