

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.2549 of 2018

S.Perumal

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Secretary to Government
Prohibition and Excise Department (Home)
Secretariat, Chennai - 600 009.
 2. The District Collector and District Magistrate
Kancheepuram
Kancheepuram 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 petitioner's son by name Ellappan, Son of Perumal, aged 27 years before the Hon'ble Court now confined in Central Prison, Puzhal, Chennai and set him at liberty and to call for the records pertaining to the order of the detention passed in B.C.D.F.G.I.S.S.S.V.No.61/2018 dated 30.08.2018 passed by the second respondent and set aside the same.

For Petitioner .. Mr.M.Rajkumar

For Respondents .. Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu and challenging the legality of the impugned order of detention dated 30.08.2018 passed by the second respondent, in and by which, his son, the detenu has been branded as a 'Goonda' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, 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), came forward to file the present Habeas Corpus Petition.

2. A perusal of the Grounds of detention order dated 30.08.2018 passed by the 2nd respondent herein, would disclose among other things, that based on the information given by his assistant that a policeman was found murdered on the Varandah of Vivekananda Matriculation Schhol, Mr. Shanmugaraj, the Village Administrative Officer of Molachur Village, Sunguvarchatram has appeared before the Sub Inspector of Police on 25.06.2018 at 08.30 hours and lodged a complaint stating that a policeman named Thiru. Mohanraj, HC 1491, working in Sunguvarchatram Police Station was found dead in a pool of blood with stab injuries on his body with bottle pieces and also his head was found crushed with a stone and based on the said complaint, the Sub Inspector of Police attached to the said police station registered a case in Cr.No.219/2018 for the commission of the offence u/s.302 IPC [ground case] and took up the case for investigation.

3. The Inspector of Police, Sunguvarchatram Police Station arrested the accused/detenu and he surrendered before the Village Administrative Officer of Siru Mangadu Village on 30.06.2018 at 08.50 hours and he also gave an extra judicial confession admitting the commission of offences and based on the admissible portion of the confession statement, incriminating articles were seized. The detenu was produced before the District Munsif-cum-Judicial Magistrate, Sriperumbudur on the same day and he was ordered to be remanded to judicial custody till 13.07.2018 and was lodged in Central Prison, Puzhal as remand prisoner and thereafter, his remand period was extended till 30.08.2018.

4. The Detaining Authority on the basis of the material placed has arrived at the subjective satisfaction that the detenu has committed offence against human lives, was commissioned under Section 302 IPC and that the detenu is habitually involving in brutal murder and acting against public tranquillity and the act of the detenu in the ground case is prejudicial to the maintenance of public peace and public order and as such, branded him as '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.

5. The learned counsel for the petitioner would submit that admittedly it is a case of solitary incident pending against the detenu and even assuming that no previous case was foisted against him and based on his involvement in a solitary

incident, Tamil Nadu Act 14 of 1982 came to be passed, and he would further submit that even from the narration of the facts relating to the ground case, no prejudice has been caused to the public peace and public order by the detenu and in the light of the same, the subjective satisfaction derived by the Detaining Authority, as to the said vital fact is purely vitiated and prays for quashment of impugned order of detention.

6. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the brutal manner in which the detenu had attacked and murdered the policeman attached to the Sunguvarchatram Police Station has caused shock waves among the public and that apart, the detenu had earlier involved in the offences of similar cases, in connection to which, a case too was registered in Crime No.1179/2015 on the file of Vishnu Kanchi Police Station and on the basis and manner in which the murder has been committed in the present case, the Detaining Authority had rightly arrived at the subjective satisfaction that the act of the detenu is prejudicial to the maintenance of public peace and public order and prays for dismissal of this petition.

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

8. The Grounds of detention and other materials on record would disclose that the deceased was found murdered and this was brought to the knowledge of the Village Administrative Officer of Molachur Village, based on which he had lodged a complaint on 25.06.2018 and a ground case was registered by the Sub Inspector of Police, Sunguvarchatram Police Station in Cr.No.219 of 2018 and later the detenu was said to have surrendered before the Village Administrative Officer of Siru Mangadu Village on 30.06.2018 and gave an extra judicial confession and on the same day, he was produced before the District Munsif cum Judicial Magistrate, Sriperumbudur and was remanded in Central Prison, Puzhal, Chennai-600 066 and thereafter, the impugned order of detention came to be passed by the second respondent, the District Collector and District Magistrate, Kancheepuram District.

9. In the considered opinion of the Court, the facts leading to the registration of the ground case, is in no way said to have affected public peace and public order for the reason that admittedly, it did not took place in the vicinity of the public persons. Though it is the primordial submission of the learned Additional Public Prosecutor that the manner in which a policeman was put to death had affected the public peace and public order, this Court is of the considered view that in the absence of any tenable and sustainable material as to the

said vital aspect, the subjective satisfaction derived by the Detaining Authority has been vitiated and therefore, the impugned order warrants interference.

10. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 30.08.2018 is hereby set aside. The detenu, viz., Ellappan, son of Mr.Perumal, aged 27 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

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To:

1. The Secretary to Government,
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
2. The District Collector and District Magistrate,
Kancheepuram, Kancheepuram District.
3. The Commissioner of Police
Greater Chennai City,
Vepery, Chennai 600 007.
4. The Joint Secretary to Government,
Public (Law and Order)
Fort St. George,
Chennai-9.
5. The Public Prosecutor,
Madras High Court, Madras.
6. The Superintendent
Central Prison, Puzhal
Chennai 600 066.

H.C.P.No.2549 of 2018

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