

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2019

CORAM

THE HON'BLE MR.JUSTICE M. SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

H.C.P.NO.2607 OF 2018

Nirmala

....

Petitioner

Vs

1. The State of Tamil Nadu rep.by its
Secretary to Government (Home)
Prohibition & Excise Department, Secretariat
Fort St.George, Chennai 600 009.

2. The Commissioner of Police
Salem City. Respondents

For Petitioner :Mr.R.Nalliyappan

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

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to direct the respondents to produce the body of the petitioner's son Prakash S/o Murugesan, who is detained in Central Prison, Salem, before the Honourable Court, and set him at liberty forthwith by calling for the records pursuant to the detention order made in CMP No.75/Goonda/Salem City/2018 dated 23.10.2018 on the file of the second respondent and quasht the same.

O R D E R

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

Petitioner is the mother of the detenu. The second respondent has clamped the impugned order of detention dated 23.10.2018 in exercise of the powers contemplated under Section 3(1) and 3(2) of '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), by branding him as a "Goonda". Challenging the legality of the same, the present Habeas Corpus Petition is filed.

2. As per the Grounds of Detention dated 23.10.2018, passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

Sl No .	Name of the Police station and Crime No.	Section of law
1	Hasthampatty PS Cr.No.201/2018	392 r/w 397, 506 (ii) IPC altered to 395, 397, 506 (ii) IPC
2	Azhagapuram PS Cr.No.176/2018	392 r/w 397, 506 (ii) IPC altered to 395, 397, 506 (ii) IPC

3. It is further averred that on 01.10.2018, the Sub Inspector of Police, Pallapatty Police Station, upon receipt of an information from Salem Government Hospital, went to the hospital and recorded the statement of the inpatient Mr.Kamesh, who would state that he is working as Executive in L.T.Food Ltd., Coimbatore Branch and he along with his friends, has purchased clothes at Gorimedu, Salem on 30.09.2018, and were returning at about 11.30 P.M., two persons followed them in a Yamaha Alpha vehicle and waylaid their vehicles and the pillion rider viz., Prakash proclaimed that he was a notorious rowdy of Meyyanur and there were number of cases pending in various stations and snatched the wristwatch and cash of Rs.870/- from him and when he attempted to catch those persons, the said Prakash brandished the knife; scratched on the right side chest, left side rib and abdomen due to which he sustained bleeding injuries; Prakash also stabbed the defacto complainant on the left side waist and navel and when he raised alarm, the said Prakash threatened them at the point of knife with dire consequences, and fled way from the scene of occurrence. The defacto complainant, has lodged a complaint based on which, the Sub Inspector of Police, Pallapatty Police Station, registered a case in Cr.No.481 of 2018 for the commission of the offences u/s.341, 324, 307, 506[ii] IPC, 392 r/w 397 IPC [ground case] and took up the case for investigation. The Inspector of Police attached to the said police station has secured the persons viz., Prakash and Simon Sasikumar and when they interrogated, both of them pleaded guilty to the commission of offence and thereafter, they were arrested. Upon the confession statement, the accused were produced before the Judicial Magistrate No.2, Salem on 01.10.2018 and then remanded to judicial custody until 15.10.2018 and the remand order was extended till 29.10.2018. he is lodged at the Central Prison, Salem and the Detaining Authority, on consideration and application of mind to the material placed, found that the acts of the detenu 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 para 6 in the Grounds of detention and would submit that in respect of the ground case, the bail petition in C.M.P.No.3482 of 2018 filed by the detenu was dismissed by the Principal Sessions Judge, Salem on 10.10.2018 and the detaining authority has observed that the relative of Prakash / detenu is again taking steps to move an application for bail to take him out on bail for the above said case and further observed that he is also aware of the fact that the bail has been granted by this Court in Cr;l.O.P.No.30341 / 2014 dated 17.11.2014 for a similar case of Ammapet Police Station Cr.No.607/2014 under Section 307 and 506(ii) IPC in favour of one Dhanasekaran. In the light of the said fact, the detenu is likely to file bail application and come out on bail and in that event, he would again indulge in acts which are prejudicial to the maintenance of public order.

5. Learned counsel for the petitioner, by drawing the attention of this Court to Page No.237 as well as Page 254 of the booklet, would submit that the said materials pertain to the similar case, in which the said Dhanasekaran was granted bail and both the copies are illegible and as such, the subjective satisfaction derived by the detaining authority is vitiated and the detenu is prevented from making effective representation, and hence prays for quashment of the impugned order of detention.

6. 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.

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

8. This Court is of the view that 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 placed reliance on similar case in Crime No.607 of 2014 registered by Ammapet Police Station, in which this Court had granted bail by an order dated 17.11.2014

in Crl.O.P.No.30341 of 2014. A perusal of page 237 of the booklet would disclose that the defacto complainant has lodged a complaint on the file of the Inspector of Police, Ammapet Police Station, and the copy of the complaint is illegible. The concerned accused filed an application for bail in Crl.O.P.No.30341 of 2014 on the file of this Court and he was granted bail and the copy of the bail order is found in Page No.254 of the booklet. Once again, the said copy of the bail order is also illegible. In the considered opinion of the Court, the detaining authority has placed reliance on the above said documents, which are illegible. That apart, the detenu was prevented from making effective representation, on account of such illegible copies. Hence, on this sole ground, the impugned order of detention warrants interference.

9. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 23.10.2018 made in C.M.P.No.75/Goonda/Salem City/2018 is hereby set aside. The detenu, viz., Prakash, son of Murugesan, aged about 23 years, who is now confined in the Central Prison, Salem, 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

KST

To

1. The Secretary to Government (Home)
Prohibition & Excise Department, Secretariat
Fort St.George, Chennai 600 009.
2. The Superintendent of Police, Central Prison, Salem.
3. The Commissionr of Police, Salem District.
4. The Joint Secretary to Government
Public (Law & Order) Fort.St.George, Chennai-600 009.
5. The Public Prosecutor, High Court, Madras.

H.C.P.No.2607 of 2018

MP(CO)
GMY(03/04/2019)