IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2609 of 2018

M.Palaiyam .. Petitioner

Versus

1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai. .. 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 in connection with the order of detention passed by the second respondent dated 22.08.2018 in Memo No.744/BCDFGISSV/2018 against the petitioner's son S.Manish Kumar, Male aged about 23 years S/o.Srinivasan, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenue before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.Balaji.M
For Respondents: Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the mother of the detenu and challenging the impugned order of detention dated 24.10.2018 passed by the 2nd respondent by invoking Section 3 (2) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Goonda', the present Habeas Corpus Petition is filed.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the following cases:

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SI. No.	Crime No.	Section of law	Date of occurrence
1.	G-2 Periyamedu Police Station Cr.No.183/2018	379 IPC	05.06.2018
2.	G-1 Vepery P.s.Cr.No.348/2018	379 IPC	07.06.2018
3.	G-1 Vepery Police Station Cr.No.362/2018	379 IPC	10.06.2018
4.	G-1 Vepery Poilce Station Cr.No.363/2018	379 IPC	10.06.2018
5.	F-5 Choolaimedu Police Station Cr.No.354/2018	392 IPC	11.06.2018

3. It is further averred in the grounds of detention that the defacto complainant namely Wilson at about 22 hours on 18.06.2018 took cash of Rs.5,000/- from the Shop and thereafter locked his shop and proceeding in his motorcycle and when he proceeded near Kamarajar Nagar Junction, Anna Nedumpathai, 3 persons came from the opposite direction in a motorcycle wrongfully restrained him and brandishing knife, threatened him with the dire consequences and the detenu has snatched a cash of Rs.5,000/- from the complainant's shirt pocket and all the accused threatened the detenu with dire consequences and when the complainant raised an alarm, public assembled and they also threatened the public and the public got panic and taking advantage of the disturbed situation, they fled away from the scene of occurrence.

4. The Inspector of Police, F-5, Choolaimedu Police Station has registered a case in Crime No.382/2018 for the commission of offences under Sections 341, 294(b), 336, 427, 392 r/w 397 and 506 (ii) IPC (ground case) and took up the investigation. During the course of investigation, the detenu was arrested on 25.06.2018 at 11.00 a.m and he voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, certain incriminating articles were seized. The detenu was produced before the XVII Metropolitan Magistrate Court, Saidapet, Chennai and he was ordered to be remanded in judicial custody till 08.07.2018 and his remand period was further extended till 02.09.2018.

5. The Detaining Authority, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, has already came to adverse notice in five cases and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of Detention and challenging the legality of the same, the present Habeas

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Corpus Petition is filed.

6. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to paragraph No.4 of the grounds of detention and would submit that the detenu did not file any application for bail on any adverse cases as well as in the ground case in which, he is in judicial custody and drawn the attention of this Court to Page No.339 of the booklet and would submit that the statement has been recorded under Section 161(3) CrPC from the mother of the detenu, wherein she has stated about the pendency of the application for bail in Crl.M.P.No.14016 of 2018 in the ground case and however, the said fact has not been extracted in the grounds of detention and therefore, the subjective satisfaction raised by the Detaining Authority is vitiated by not taking into consideration the relevant material and if it would have been taken note, the subjective satisfaction raised by the Detaining Authority and imminent possibility which are prejudicial to the public peace and order would got vitiated and prays for interference of the same.

7. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind to the entire materials, has rightly reached the subjective satisfaction and clamped the impugned order of detention and prays for dismissal of this petition.

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

9. A perusal of the statement of the mother of the detenue recorded under Section 161(3)CrPC, which is available at Page No.339 of the booklet would disclose that on behalf of the detenu, Crl.M.P.No.14016 of 2018 has been filed on the file of the Principal Sessions Court, Chennai for bail in the ground case and however, despite the said fact has been taken into consideration in Paragraph No.4 of the grounds of detention, the Detaining Authority has failed to advert to go into the said material fact and that apart in page no.5 of the ground of detention, the Detaining Authority derived the satisfaction that the detenu already came to adverse notice in 16 cases and however, the adverse cases referred, are only five in the Detention Order.

10. In the considered opinion of this Court, the Detaining Authority has failed to take into consideration the said material fact while arriving at the subjective satisfaction and on the sole ground, the subjective satisfaction derived by the Detaining Authority as to the said fact, especially with regard to the real and imminent possibility of the detenu coming out on

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bail and indulging in activities, which are prejudicial to the maintenance of public order and peace, is vitiated. Hence on the sole ground, the impugned detention order warrants interference.

11. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 22.08.2018 in Memo No.744/BCDFGISSSV/2018 is set aside and the detenu is set at liberty forthwith, unless his detention / custody is required in connection with any other case / proceedings.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Public Prosecutor
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.

+1 CC to Mr.M.Balaji, Advocate sr 20389.

HCP.No.2609 of 2018

SP(26/04/2019)

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