

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2620 of 2018

Stella Mary

.. Petitioner

Vs.

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

2.The District Collector & District Magistrate
Kancheepuram District
Kancheepuram.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records in connection with the order of Detention passed by the second respondent dated 16.10.2018 in B.C.D.F.G.I.S.S.V.No.80/2018 against the petitioner's husband Purushothaman @ Chinrasu @ Kosu, male aged 24 years, S/o. Veeraraghavan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner.. Mr.D.Balaji

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

ORDER

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

The petitioner, who is the wife of the detenu, namely Purushothaman @Chinrasu @ Kosu, aged 24 years, challenging the legality of the impugned order of detention dated 17.10.2018 passed by the second respondent, in and by which, her husband/detenu has been branded as ''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 would disclose among other things that the detenu came to adverse notice in the following cases :

Sl No.	Name of the Police station and Crime No.	Section of law
1	Kanchi Taluk Police Station Cr.No.548/2017	392 r/w 397 & 34 IPC
2	Vishnu Kanchi Police Station Cr.No.684/2017	379 IPC

It is alleged in the grounds of detention that the defacto complainant, namely Rajesh, S/o.Chandran, aged 24 years is the resident of No.11/25, K.S.P. Parthasarathy Street, Kamatchiamman Colony, Kancheepuram has lodged a complaint on 17.09.2018 before the Special Sub Inspector of Police, Kanchi Taluk Police Station, as an in-patient in Government Hospital, Kancheepuram, and it would state among other things that on 17.09.2018, at about 01.30 hours, while the complainant was chatting with his friends, opposite to Kamatchiamman Society, the detenu/accused who is the son-in-law of one Kishti, threatened him by demanding money, and when the defacto complainant denied, the accused abused the complainant in filthy language and assaulted him with his knife, due to which he sustained injuries on left side of his neck, on his two hands, abdomen region, etc., The friends around him was in panic and moved away from the spot and taking advantage of it, he took a cash of Rs.500/- from the complainant's pocket. The defacto complainant raised an alarm and on seeing the public gathered there, the detenu/accused fled away from the scene of occurrence. The friends and the public came for rescue and this incident was informed to his mother and thereafter, he was taken to Government Hospital, Kancheepuram for treatment and was admitted as in-patient. The Special Sub Inspector of Police, on receipt of the complaint, has registered a case in Cr.No.705/2018 for the offences under Sections 294(b), 307, 397 IPC [ground case] and took up the case for investigation.

3. The detenu was arrested by the Inspector of Police at 10.00 hours on the same day and he voluntarily came forward to give confession statement in the presence of two independent witnesses. His statement was recorded and based on the

admissible portion of the confession statement, incriminating articles were seized. The detenu was produced before the Court of Judicial Magistrate-II, Kanchipuram on the same day, and he was ordered to be remanded to judicial custody till 01.10.2018 as remand prisoner in Central Prison, Vellore and his remand period was extended till 29.10.2018.

4. The Detaining Authority, on the basis of the materials placed and on consideration of the same, has arrived at the subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public peace and order, and as such, branded the detenu as 'Goonda' and clamped the impugned order of detention. Challenging the legality of the same, the present habeas corpus petition is filed.

5. The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.5 of the English version of the grounds of detention, wherein the Detaining Authority has failed to note that the petitioner had moved a bail application in CMP.No.3335/2018 on the file of the District and Principal Sessions Court No.II., Kancheepuram and the same was dismissed on 03.10.2018. The details as to the filing of the bail application by the detenu, have not been disclosed in paragraph No.5 of the English version of the grounds of detention, but, the said details are found in the Vernacular version of the grounds of detention, and that the Detaining Authority had failed to advert to the said fact and even otherwise, he should have sought a clarification from the Sponsoring Authority, which, he failed to do so, and mechanically derived the subjective satisfaction that if the detenu is released on bail, there is a real possibility of the accused/detenu being indulging in similar activities of crime, which are prejudicial to the maintenance of public peace and order. Thus, the impugned order of detention passed by the Detaining Authority, has to be vitiated and prays for quashment of the 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 considered the rival submissions and also perused the materials placed before it.

8. As rightly pointed out by the learned counsel appearing for the petitioner, in paragraph No.5 of the Vernacular version

of the grounds of detention, the details relating to the detenu's arrest and also the details as to the bail application filed by the detenu in CrI.MP.No.3335/2018 on the file of the District and Principal Sessions Court No.II., Kancheepuram has been stated and so also the dismissal of the said bail application, whereas, in the English version of the detention order, it is totally silent on that aspect. In the considered opinion of this Court, a perusal of the grounds of detention would disclose that the impugned order of detention came to be passed with certain discrepancies as stated above, which it ought not have done so, but the Detaining Authority has failed to advert to the said fact and also arrived at the subjective satisfaction that there is a real and imminent possibility of the detenu indulging in such activities which are prejudicial to the maintenance of public peace and order, if he is released on bail and therefore, the impugned order of detention is liable to be vitiated and on this sole ground, it warrants interference.

9. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent in BCDFSGISSV No.80 of 2018 dated 16.10.2018 is hereby set aside. The detenu, viz., Purushothaman @ Chinrasu @ Kosu, aged 24 years, son of Mr.Veeraraghavan, who is now confined in the Central Prison, Vellore, 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)

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Sub Assistant Registrar

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To:

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai - 600 009.
- 2.The District Collector & District Magistrate
Kancheepuram District,
Kancheepuram.
- 3.The Superintendent, Central Prison,
Vellore.

4.The Joint Secretary to Government,
Public (Law & Order), Fort St.George, Chennai 9.

5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2620 of 2018

CSL/28.05.2019



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