

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM:

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

H.C.P.No.2627/2018

Azhagarsamy

.. Petitioner/
Father of Detenu

vs.

1. The State of Tamil Nadu rep.by
The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police
Greater Chennai, Chennai.

.. 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 petitioner son Velmurugan @ Murugan, son of Azhagarsamy, aged about 27 years, before this Court now confined in Central Prison, Puzhal, Chennai, set him at liberty and to call for the records pertaining to the order of detention passed No.983/BCFGISSSV/2018 dated 26.10.2018 passed by the 2nd respondent and set aside the same.

For Petitioner .. Mrs.L.Srilekha
For Respondents .. Mr.C.Iyyappa Raj, APP

ORDER

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

The father of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 26.10.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a 'Goonda' under the provisions of section 3[1] of the Tamil Nadu Prevention of dangerous activities of Bootleggers, 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 26.10.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	M8 Sathangadu PS Cr.No.287/2018	457 & 380 IPC
2	M6 Manali PS Cr.No.482/2018	341, 294[b], 332 & 506[i] IPC
3	M2 Madhavaram Milk Colony PS Cr.No.320/2018	454 & 380 IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Thiru Selvamani, a resident of Manali, Chennai-68, is doing coolie work and at about 8.00 hours on 09.10.2018, he was proceeding near Jothi Vilas Hotel, Kamarajar Salai, Manali and at that time, two persons came in the opposite direction, wrongfully restrained him and threatened him to part with the money and when it was questioned, one of the accused brandished a knife and disclosed his identity and snatched a sum of Rs.525/- from his shirt pocket. The complainant lodged a complaint with M6 Manali Police Station and the Inspector of Police, attached to the said Station, based on the complaint from the defacto complainant, has registered a case in Cr.No.486/2018 for the commission of the offences u/s.341, 294[b], 336, 427, 392, 397 and 506[ii] IPC [ground case] and took up the case for investigation. During the course of investigation, he effected the arrest of the detenu on the same day at about 09.45 hours and when examined, he came forward to give a confession statement and based on the admissible portion of the same, incriminating articles were recovered. The detenu along with the other accused, was produced before the Court of Judicial Magistrate, Tiruvotriyur on 09.10.2018 and were remanded till 23.10.2018 and the remand period was also extended till 02.11.2018 and were lodged at the Central Prison, Puzhal as remand prisoners. The Detaining Authority was satisfied that the detenu came to the adverse notice in three cases and that in the ground case he has acted in a manner prejudicial to the maintenance of public order and as such, branded him as a 'Goonda' and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present petition is filed.

3 The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.4 of the Grounds of Detention and would submit that the detenu is in connection with

the adverse cases No.2 and 3 as well as in the ground cases and he has moved the application for bail in the ground case on the file of the Court of the Principal District and Sessions Judge, Tiruvallur and the same is pending and admittedly, the detenu did not move any bail application in the 2nd and 3rd adverse cases and the Sponsoring Authority, as to the real and imminent possibility of the detenu coming out on bail in those two adverse cases and if he comes out on bail, he will indulge in activities which are prejudicial to the maintenance of public order, has placed reliance upon the fact of relatives of the detenu taking steps to file the bail applications in the said two adverse cases. The learned counsel has also drawn the attention of this Court to page No.232 of the Booklet and would submit that except the self-serving statement of the Sponsoring Authority, viz., the Inspector of Police, Law and Order, M6 Manali Police Station, no statements of the relatives had been recorded and in the absence of such a vital materials as to the real and imminent possibility of the detenu coming out on bail in the 2nd and 3rd adverse cases and also in indulging in activities which are prejudicial to the maintenance of public order, the subjective satisfaction derived by the Detaining Authority is vitiated and therefore, prays for quashment of the detention order.

4 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.

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

6 As rightly pointed out by the learned counsel for the petitioner, a perusal of page No.232 of the Booklet would reveal that except the self serving statement of the Sponsoring Authority, no material whatsoever has been placed to show that the relatives of the detenu are taking steps to file the bail applications in the 2nd and 3rd adverse cases and in the absence of such a relevant and vital materials, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and hence, on this sole ground, the detention orders, impugned herein, are 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 26.10.2018 is hereby set aside. The detenu, viz., Velmurugan @ Murugan, son of Azhagarsamy, aged about 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 IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police
Greater Chennai, Chennai.
3. The Public Prosecutor,
Madras High Court, Madras.
4. The Superintendent
Central Prison, Puzhal, Chennai-66.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-600 009.

+1cc to Mrs.L.Srilekha, Advocate, S.R.No.20225

H.C.P.No.2627/2018

RJI (CO)
CS/17/07/2019

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