

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.03.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2639, 2641 & 2642 of 2018

- | | | |
|--------------|----|--------------------------------------|
| 1. Sarojini | .. | Petitioner in
HCP.No.2639 of 2018 |
| 2. Bogapathi | .. | Petitioner in
HCP.No.2641 of 2018 |
| 3. Manjula | .. | Petitioner in
HCP.No.2642 of 2018 |

Versus

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

- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section)
Vepery, Chennai – 600 007.

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Respondents
in all H.C.Ps

Prayer in H.C.P.No.2639 of 2018:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in No.975/BCDFGISSSV/2018 dated 25.10.2018 and quash the same and direct the Respondents to produce the body and person of the petitioner's husband namely Kavinraj, son of Thomas, aged about 29 years detained in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty forthwith.

Prayer in H.C.P.No.2641 of 2018:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in No.973/BCDFGISSSV/2018 dated 25.10.2018 and quash the same and direct the Respondents to produce the body and person of the petitioner's son namely Babu @ Bogapathi Babu, son of Bogapathi, aged about 40 years detained in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty forthwith.

Prayer in H.C.P.No.2642 of 2018:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in No.976/BCDFGISSSV/2018 dated 25.10.2018 and quash the same and direct the Respondents to produce the body and person of the petitioner's son namely Sathishkumar, son of Lakshmanan, aged about 37 years detained in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioners	:	Mr.S.Mohamed Ansar in all H.C.Ps
For Respondents	:	Mr.C.Iyyappa Raj, APP in all H.C.Ps

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

The present Habeas Corpus Petitions came to be filed challenging the impugned order of detention dated 25.10.2018 passed by the 2nd respondent in and by which, the detenues are branded as “**Goondas**” and detained under Section 2(f) of the Tamil Nadu Act 14 of 1982 and challenging the legality of the impugned orders of detention, these Habeas Corpus Petitions are filed.

2. A perusal of the grounds of detention order passed would indicate that all cases pertains to solitary cases. The grounds of detention further state that one Tmt.Sandhiya, resident of Kundrathur, Chennai-69 is a homemaker and her husband is doing real estate business and the complainant's elder brother fell in love with one Sowbakkiyavathi, daughter of accused Thiru.Babu @ Bogapathi Babu and it was opposed by him and against his wishes, marriage between Sowbakkiyavathi and Mohan was solemnized on 28.01.2018 at St.Anthony's Church, Besant Nagar and enraged over the same, Babu @ Bogapathi Babu threatened the complainant's husband with dire consequences. One month prior to 30.09.2018, Babu @ Bogapathi Babu sent new dress to his daughter Tmt.Sowbakkiyavathi and it was further represented that jewels would

also be presented and for that purpose, the complainant husband took his motorcycle and left along with one Mahesh. Later on complainant along with Thiru.Krishnakumar was proceeding near Vinayakar Temple tank at Karumariamman Nagar and she noticed that the detenu in H.C.P.No.2641/2018 along with one Samukutty and Thiru.Venkat were indiscriminately assaulting the complainant's husband and unable to bear with the same, he raised an alarm. At that time, the defacto complainant also noticed that one Mahesh nad Sathishkumar / detenue in H.C.P.No.2642/2018 fled away from the scene of occurrence and the husband of the defacto complainant circumvent to injuries.

3. On account of the grievous injuries sustained, the defacto complainant immediately, lodged a complaint before the Inspector of Police, T-13, Kundrathur Police Station, based on which, a case in Cr.No.1182/2018 has been registered under Sections 147, 148, 302 r/w 120 (b) IPC and took up the investigation. During the course of investigation, the said official has effected the arrest of the detenues in H.C.P.No.2639, 2641 & 2642 of 2018, along with one Gangadharan on 01.10.2018 and they voluntarily came forward to give a confession statement admitting their role in the said crime which also lead to. As per

the admissible portion of the confession statement, some incriminating articles were also seized. All the accused including the detenues were produced before the Court of District Munsif cum Judicial Magistrate, Sriperumbudhur, Kanchipuram District on 01.10.2018 and were ordered to be remanded in judicial custody till 05.10.2018 and the remand period was extended till 29.10.2018.

4. The Detaining Authority, on the basis of materials, formed a subjective satisfaction that their 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 Corpus Petitions are filed.

5. The learned counsel appearing for the petitioners has drawn attention of this Court to paragraph no.3 of the detention order and would submit that in a similar case registered by F-1 Chintadripet Police Station in Cr.No.809 of 2014, for the commission of offences under Sections 147, 148, 341, 307 IPC and altered into 302 IPC, bail was granted to the accused in CrI.M.P.No.17395 of 2014 and relied upon the same for the purpose of deriving of the subjective satisfaction as to the real and

the maintenance of public order and pointed out that admittedly the first page of the bail order have not been enclosed though a copy of the same has been furnished and despite the first page of the said order of bail has been requested in the representation submitted on behalf of the detenu, still copies have not been furnished and therefore, prays for quashment of the impugned order of detention.

6. *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 has rightly clamped the impugned order of detention and whatever relying upon documents relied on by the 2nd respondent / Detaining Authority, the copies of the same have been furnished and prays for dismissal of this Habeas Corpus Petition.

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

8. A perusal and consideration of the paragraph No.9 of the

counter affidavit filed by the 2nd respondent would disclose that the representation in that regard are under due consideration and files relating to the impugned order of detention have already been produced before this Court and it would disclose that the 2nd respondent / Detaining Authority has sent a communication dated 12.06.2018 to the Additional Secretary to Government, Home, Prohibition and Excise Department, Chennai-9 and the copies of the 1st page of the bail order would be furnished to the detenues.

9. The learned Additional Public Prosecutor would submit that the copies of the first page of the said order have not been furnished neither to the detenues nor to the representatives. In the considered opinion of this Court, despite taking such a stand that non furnishing of the first page of the similar orders which has been relied upon by the Detaining Authority for arriving at the subjective satisfaction and that apart, the Deputy Secretary, Home, Prohibition and Excise Department has also assured as to the furnishing of the said copies and despite assurance and undertaking as cited above, copies of the 1st page of the said bail order have not been furnished and apart from exhibiting non-application of mind to the said vital fact despite assurance given to the Additional Chief

Secretary, Home, Prohibition and Excise Department, the copies of the first page have not been furnished neither to the detenues nor to the representative. The Detaining Authority deriving subjective satisfaction as to the real and imminent possibility of him to come out on bail which are prejudicial to the maintenance of public order and peace, is definitely vitiated. Hence on the sole ground, the order of Detention warrants interference.

10. Accordingly, these Habeas Corpus Petitions stand allowed and the Detention Orders passed by the second respondent dated 25.10.2018 in No.975/BCDFGISSSV/2018 in H.C.P.No.2639 of 2018 No.973/BCDFGISSSV/2018 in H.C.P.No.2641 of 2018 and No.976/BCDFGISSSV/2018 in H.C.P.No.2642 of 2018 are set aside and the detenues namely Kavinraj, son of Thomas, aged about 29 years, Babu @ Bogapathi Babu, son of Bogapathi, aged about 40 years Sathishkumar, son of Lakshmanan, aged about 37 years, are set at liberty forthwith unless their detention / custody are required in connection with any other case / proceedings.

[M.S.N., J] [M.N.K., J]
11.03.2019

Internet : Yes

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To

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

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section)
Vepery, Chennai – 600 007.

3.The Public Prosecutor
High Court, Madras.



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M.SATHYANARAYANAN, J.,
AND
M.NIRMAL KUMAR, J.,

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