

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2637 of 2018

Ranjani

.. Petitioner

Vs.

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

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

.. 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 connected with the detention order of the second respondent in No.998/BCDFGISSSV/2018 dated 29.10.2018 and quash the same and direct the respondents to produce the body and person of the petitioner's son namely Saranraj @ Saran, son of Babu, aged about 27 years detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner .. Mr.S.Mohamed Ansar

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

ORDER

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

The petitioner, who is the mother of the detenu, namely Gangadharan, challenging the legality of the impugned order of detention dated 29.10.2018 passed by the second respondent, in and by which, her son/detenu has been branded as a "**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 order dated 29.10.2018 passed by the 2nd respondent herein, would disclose that the detenu came to adverse notice in the following case:-

Adverse cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	T-13, Kundrathur Police Station Cr.No.1182/2018	147, 148, 302 r/w 120(b) IPC

3. It is alleged in the Grounds of the detention that the defacto complainant viz., Venu, is a labourer by profession and he is residing at No.4, Pillaiyar Koil Street. Aramarmpedu, Kancheepuram. On 06.10.2018, at about 21.00 hours, while the defacto complainant was proceeding in his bicycle near

Pudupedu Kootu Road, two persons waylaid him and threatened him to handover the money he possessed. When the defacto complainant replied "no", the accused threatened him at knife point and disclosed their identity that one among him is Manikandan @ Kakka Manikandan and the other is Saranraj @ Saran, and that they are rowdies who had involved in committing a murder of one Girirajan. Immediately, to grab the money from the defacto complainant, the accused Manikandan @ Kakka Manikandan stabbed the knife over the complainant's stomach, but the defacto complainant moved aside and escaped unhurt. Threatening the accused at knife point, the accused snatched Rs.600/- from the pocket of the complainant and also his mobile phone. The defacto complainant raised an alarm and passers-by gathered there and in order to escape from the scene, both the accused took cool drinks bottle from the nearby bunk shop and hurled the same over the road and also pelted the jelly stones found on the road, against the public and escaped from the scene. Thereafter, the defacto complainant gave a complaint to the police, based on which, a case in Crime No.1197/2018 on the file of T-13, Kundrathur Police Station, for the commission of the offences u/s.341, 294(b), 336, 427, 397 and 506(ii) IPC **[ground case]** and took up the case for investigation.

3. During the course of investigation, the arrest of detenues was effected by the Inspector of Police on 07.10.2018 at about 08.00 hours and on enquiry, the detenu has admitted his involvement in the ground case as well as in the adverse case in Crime No.1182/2018 on the file of T-13, Kundrathur Police Station. The detenu as well as the co-accused voluntarily came forward to give a confession statement admitting their role in both the above crimes committed by

him and the statement was recorded and based on the admissible portions of the confession statements, incriminating articles were seized. The arrested persons were produced before the Court of District Munsif cum Judicial Magistrate, Sriperumbudur, Kanchipuram District on the same day, and the accused were ordered to be remanded to judicial custody till 17.10.2018 as remand prisoners in Central Prison, Puzhal and their remand period was extended till 31.10.2018.

4. The Detaining Authority, on the basis of the materials placed, has arrived at the subjective satisfaction that the acts of the detenu are prejudicial to the maintenance of public order and as such, branded the detenu as "Goonda" and clamped the impugned order of detention and 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.4 of the grounds of the detention order, wherein the detaining authority to derive the subjective satisfaction has inferred that there is an imminent possibility that if the detenu coming out on bail in Crime Nos.1182/2018 and 1197/2018 on the file of T-13, Kundrathur Police Station, he would indulge in such activities, which are prejudicial to the maintenance of public order and peace, and also placed reliance regarding his arrest in a similar case registered in Cr.No.809/2014 on the file of F-1, Chintadripet Police Station, for the commission of offences under Section 147, 148, 341, 307 altered in to Section 302 IPC, wherein bail was granted by the learned Principal Sessions Judge, Chennai in CrI.MP.No.17395 of 2014 and in yet another case, bail was granted to the detenu by the Principal District and Sessions Court, Tiruvallur in

Crl.MP.No.3177/2018, against his arrest in in Crime No.369/2018, for the offences registered under Section 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC, on the file of M-4 Red Hills Police Station,

6. It is the primordial submission of the learned counsel appearing for the petitioner that the order passed by the learned Principal Sessions Judge in Crl.MP.No.17395 of 2014 was available at Page No 318 of the booklet supplied to the detenu and has drawn the attention of this Court to the said page and would submit that the first page of the English version of the bail order is not available in the booklet, though the Tamil version is complete in all respect. He also added that the documents including his bail application and the order passed by the Sessions Court, Tiruvallur in Crl.MP.No.3177/2018, granting bail, which relates to his arrest in yet another case in Crime No.369/2018 on the file of M-4 Red Hills Police Station was also found missing in the booklet. In the absence of the first page of the bail order in Crl.MP.No.17395 of 2014 and not furnishing the details related to Crime No.369/2018, the detenu has been put to prejudice and was under preventive detention, and that he has been prevented from making effective representation for revocation of the detention order in time and that apart, non-consideration of the detaining authority to furnish the said relevant and vital documents, inspite of he making a representation to the respondent, seeking a copy of the said documents, the order of detention has to be vitiated and prays for quashment of the same.

7. *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.

8. It is brought to the knowledge of this Court that H.C.P.Nos.2639/2018, 2641/2019 and 2642/2018, have been filed praying to set at liberty the detenues viz., (i) Kavinraj, S/o.Thomas, (ii) Babu @ Bogapathi Babu, S/o.Bogapathi and (iii) Sathishkumar, S/o.Lakshmanan, and the said petitions came to be allowed vide order dated 11.03.2019.

9. This Court paid its best attention and has considered the rival submissions and also perused the materials placed before it.

10. A perusal of the booklet supplied to the detenu would disclose that the order passed in CrI.MP.No.17395 of 2014, granting bail to the concerned accused in Cr.No.809/2014 on the file F-1, Chintadripet Police Station, is available at Page No.318 and that the first page of the English version of the said order is missing. No doubt, the vernacular version of both pages 1 and 2 is given in the booklet. Since it is a document relied upon by the detaining authority and in the absence of the first page of the bail order in CrI.MP.No.17395 of 2014, which also contains crucial details as to the details of the accused as well the offences and accusation, and the same is missing, the detaining authority should have bestowed its attention to the said aspect. However, the detaining authority has failed to do so, and that apart, a representation is also submitted on behalf of the detenu pointing out the said defect and prayed for a copy of it. Though the records produced before this

Court would disclose that an undertaking has been given to furnish the same, the fact remains that the copy of the first page of the said order have not been furnished to the detenu, despite his representation being made.

11. The above facts and circumstances would disclose non-application of mind on the part of the detaining authority as to the non-availability of first page of the bail order in Crl.MP.No.17395 of 2014, and despite the request made by the detenu, the first page of the said order was not furnished to him. Hence, in the considered opinion of this Court, the above facts would definitely vitiate the impugned order of detention and therefore, it is liable to be quashed.

12. In the result, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent dated 29.10.2018 is hereby set aside. The detenu, viz., Saranraj @ Saran, son of Mr.Babu, aged 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.

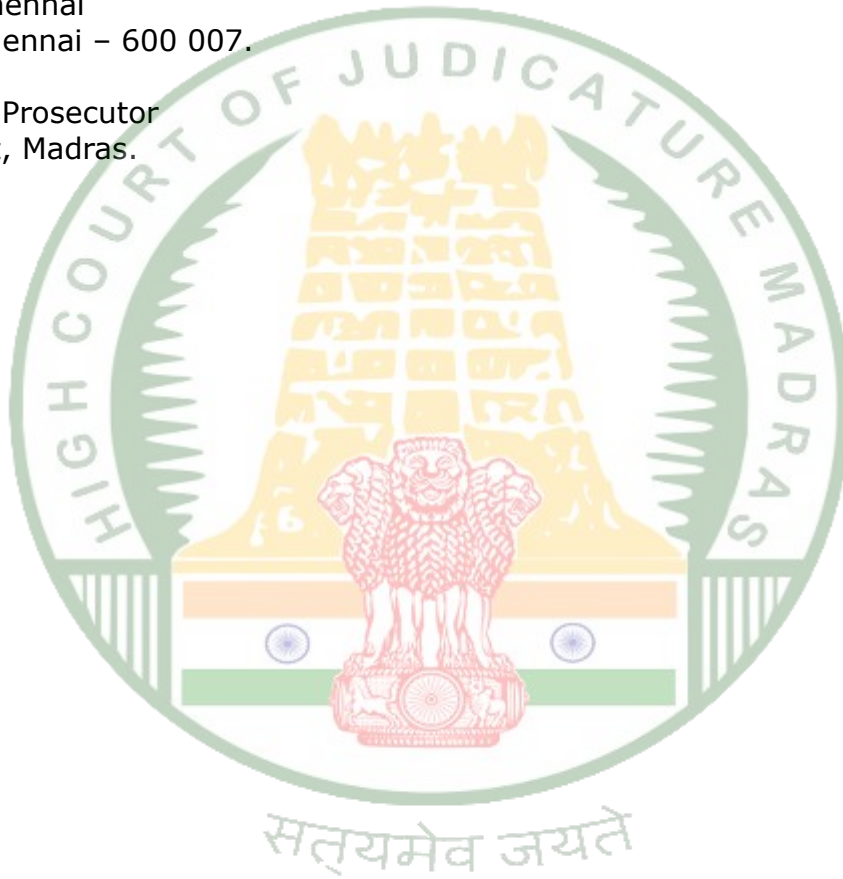
[M.S.N, J.] [M.N.K., J.]
14.03.2019

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Index : Yes/No
Internet : Yes/No

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AND
M.NIRMAL KUMAR, J.,
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