

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2678 of 2018

Varalakshmi

.. Petitioner

Versus

1.The State of Tamil Nadu
rep.by the Secretary to the Government,
Home Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and 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 directing the respondents to produce the petitioners son by name Vasa @ Vasanth son of Dhayalan, aged about 24 years before this Court now confined in Central prison, Vellore and set him at liberty and to call for the records pertaining to the order of detention passed in BCDFGISSSV No.87/2018 dated 01.11.2018 passed by the 2nd respondent and set aside the same.

For Petitioner : Mr.K.Thenrajan

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 01.11.2018 passed by the 2nd respondent by invoking Section 2 (f) of the Tamil Nadu Act 14 of 1982, 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 case:

SI. No.	Crime No.	Section of law	Date of occurrence
1.	Siva Kanchi PS Cr.No.241/2017	120-B, 147, 148, 302 IPC r/w 114, 149 IPC	05.04.2017

It is further averred in the grounds of detention that on 17.10.2018 at about 20.30 hrs, one Mr.Ajith Kumar, resident of Kancheepuram appeared before the Inspector of Police, Vishnu Kanchi Police Station stating among other things that he was running a mobile stall selling non-vegetarian items opposite to Yamaha Showroom, Periyar Nagar, Chengalpattu and at about 07.30 hours, two persons came in a car purchased food items and however refused to pay for the same and when the defacto complainant asked for payment, he was not only abused but also beat him with hands and when the defacto complainant raised an alarm, the detenu took a wooden log found in the nearby place and assaulted him. The public also gathered and they also on account of the said act got feared and ran away and taking advantage of the situation, the detenu and another accused ran away from the scene of occurrence.

3. The Inspector of Police, Vishnu Kanchi Police Station based on the complaint given by the defacto complainant, has registered a case in Cr.No.555 of 2018 under Sections 294 (b), 324, 307, 506(ii) IPC r/w 3(i) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 and took up the investigation. The detenu was arrested on 17.10.2018 at mid-night hours and voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized and the detenu was also produced before the Court of Judicial Magistrate No.I and was ordered to be remanded to judicial custody till 01.11.2018.

4. The Detaining Authority, on the basis of materials available, formed a subjective satisfaction that the detenu, who has committed the crime, has already come 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 Corpus Petition is filed.

5. The learned counsel appearing on behalf of the detenu filed an application in respect of the ground case in Cr.M.P.No.3590 of 2018 on the file of the Court of District

Sessions Court-II, Kancheepuram on 23.10.2018 and the same is pending. The Detaining Authority in order to derive the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in activities, which are prejudicial to the maintenance of public order and peace, has placed reliance upon a similar case where the accused therein got bail in CrI.M.P.No.3209 of 2013 in Manimangalam Police Station, Cr.No.236 of 2013 for the commission of offence under Sections 294 (b), 386, 506 (ii), 307 IPC r/w 3(i) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. The primordial submission of the learned counsel appearing for the petitioner by drawing attention of this Court to page No.159 of the booklet that in that case, the Court noted that the mother of the petitioner therein undertook to compensate the loss and that the petitioner therein did not have any bad antecedents and however in the case on hand, the detenu is having one adverse case and therefore, it cannot be stated as a similar case to arrive at the subjective satisfaction and hence prays for quashment of the same.

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 to the entire materials, has rightly reached the subjective satisfaction and clamped the impugned order of detention and prays for dismissal of this petition.

7. This Court has carefully 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 a similar case in Cr.M.P.No.3209 of 2013, Thiru.Thiyagarajan was enlarged on bail and his mother was undertook to compensate the loss that apart, the petitioner therein did not have any bad antecedents and however in the present case on hand, the detenu admittedly having antecedent in the form of one adverse case and therefore, the said order relied upon by the Detaining Authority cannot said to be a similar case and as such the subjective satisfaction raised by the Detaining Authority as to the real and imminent possibility of the detenu coming out on 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.

9. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent dated 01.11.2018 in Memo No. BCDFGISSSV No.87/2018 is set aside and the detenu viz., Vasa @ Vasanth son of Dhayalan, aged about 24 years, is set at liberty forthwith, unless his detention /

custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

Sk

To

- 1.The Secretary to the Government,
Home Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram
- 3.The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, chennai 9
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

HCP.No.2678 of 2018

SV(CO)
GN(26/04/2019)

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