

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2654/2018

Selvi

..

Petitioner

vs.

1.The Government of Tamil Nadu,
rep. by its Secretary, Home,
Prohibition and Excise(XVI) Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Office of Commissioner of Police,
Greater Chennai,
Veppery, Chennai

..

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus, calling for the records in detention order Memo No.945/BCDFGISSSV/2018 Dated 15.10.2018 on the file of the 2nd respondent and quash the same and direct the respondent herein to produce the body of the petitioner's son Vignesh @ Vikky @ M.G.R. Aged about 24 years, the detenu now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner ..
For Respondents ..

Mr.K.Kannan
Mr.C.Iyyapparaj, APP

ORDER

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

The petitioner is the mother of the detenu, viz., Vignesh @ Vikky @

M.G.R., aged about 24 years, herein, and challenging the legality of the

impugned order of detention dated 15.10.2018 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 Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present habeas corpus petition.

2 As per the Grounds of Detention dated 15.10.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases and he is in custody in connection with the adverse cases No.6 to 11:-

i)Adverse cases:

Sl No .	Name of the Police station and Crime No.	Section of law
1	S-8 Adambakkam Police Station Cr.No.1043/2017	379 IPC
2	S-8 Adambakkam Police Station Cr.No.1056/2017	379 IPC
3	S-8 Adambakkam Police Station Cr.No.1080/2017	392 IPC @ 394 IPC
4	S-8 Adambakkam Police Station Cr.No.1135/2017	379 IPC
5	S-8 Adambakkam Police Station Cr.No.1159/2017	379 IPC
6	S-8 Adambakkam Police Station Cr.No.304/2018	379 IPC

7	S-8 Adambakkam Police Station Cr.No.526/2018	457, 380 IPC
8	S-8 Adambakkam Police Station Cr.No.534/2018	379 IPC
9	S-8 Adambakkam Police Station Cr.No.535/2018	457, 380 IPC
10	S-8 Adambakkam Police Station Cr.No.537/2018	457, 380 IPC
11	S-8 Adambakkam Police Station Cr.No.539/2018	457, 511 IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Marimuthu, son of Saminathan, is a resident of Manamadurai, Sivaganga District and he is working as a Tea Master in Krishna Tea Stall and at about 5.30 a.m. on 27.08.2018, he was proceeding by walk and when he was nearing the lake bund near Medavakkam Main Road, he was wrongfully restrained by a person and was threatened and the complainant was asked to part with the things in his pocket and the complainant questioned him, the detenu abused him in unparliamentary words and also threatened him with dire consequences and in the process the said person also disclosed his name and identity and brandished a knife and asked him to part with the money and also threatened to inflict knife injuries and he snatched away a sum of Rs.850/- and a cellphone from the shirt pocket of the complainant and when the complainant raised an alarm, the public nearby gathered and they were also threatened with dire consequences

and taking advantage of the situation, he fled away from the scene of crime. The Inspector of Police, S8 Adambakkam Police Station, based on the complaint given by the complainant, has registered a case in Crime No.544/2018 for the commission of the offences u/s.341, 294[b], 323, 336, 392, 397 and 506[ii] IPC **[ground case]** and took up the case for investigation. The detenu was arrested at about 8.00 hours on 27.08.2018 and he voluntarily came forward to give a confession statement, the admissible portion of which had led to recovery of some incriminating articles. The detenu was produced before the Judicial Magistrate, Alandur, on 27.08.2018 and was ordered to be remanded to judicial custody till 04.09.2018 and the remand period was further extended upto 16.10.2018. The Detaining Authority has derived the subjective satisfaction that the acts of the detenu are prejudicial to the maintenance of the 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.

4 The learned counsel for the petitioner has invited the attention of this Court to paragraph No.4 of the Grounds of Detention and would submit that admittedly, the detenu is incarcerated in

connection with the adverse cases 6 to 11 and in the ground case and in order to derive at the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulge in activities which are prejudicial to the maintenance of public order, the Detaining Authority has placed reliance upon three similar orders made in [1] CrI.MP.No.994/2018 granted by the learned Judicial Magistrate, Tambaram concerned in Crime No.1843/2017 on the file of S15 Selaiyur Police Station ; [2] CrI.MP.No.336/2018 concerned in S15 Selaiyur Police Station Cr.No.47/2018 ;and [3] the order granting bail in the 8th adverse case in CrI.MP.No.5351/2018 and would submit that in respect of the orders granting bail to the accused concerned in CrI.MP.Nos.336/2018 and 5351/2018, admittedly, the said accused have not been visited with any antecedents and the orders do not reflect as to the pendency of the number of cases against the accused and admittedly, in the case on hand, the detenu is having 11 adverse cases and that apart, there is also a ground case and as such, there is a distinct possibility of the detenu coming out on bail and indulge in activities which are prejudicial to the maintenance of public order and peace and the said vital aspect has not been taken into consideration by the Detaining Authority and prays for interference.

5 *Per contra*, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor would submit that as far as the order granting bail in the first similar case in CrI.MP.No.994/2018, admittedly, the petitioner concerned was also having antecedents and despite the fact, taking into consideration the period of incarceration, the petitioner therein was granted bail and as such, the Detaining Authority after having fully satisfied and after due application of mind, has rightly clamped the impugned Order of Detention and prays for dismissal of this petition.

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

7 As rightly pointed out by the learned counsel for the petitioner, 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 indulge in activities which are prejudicial to the maintenance of public peace and order, has placed reliance upon three orders and a perusal of the first and second similar orders would disclose that the concerned accused / petitioners have not been visited with any bad antecedents and taking into consideration the period of incarceration, they were granted bail. However, in the case on hand,

admittedly, the petitioner is facing 11 adverse cases and also ground case and as such, the subjective satisfaction derived by the Detaining Authority in that regard, is vitiated and hence, the impugned Order of Detention warrants interference.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 15.10.2018 is hereby set aside. The detenu 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.]
29.04.2019

Internet : Yes
AP
To

सत्यमेव जयते

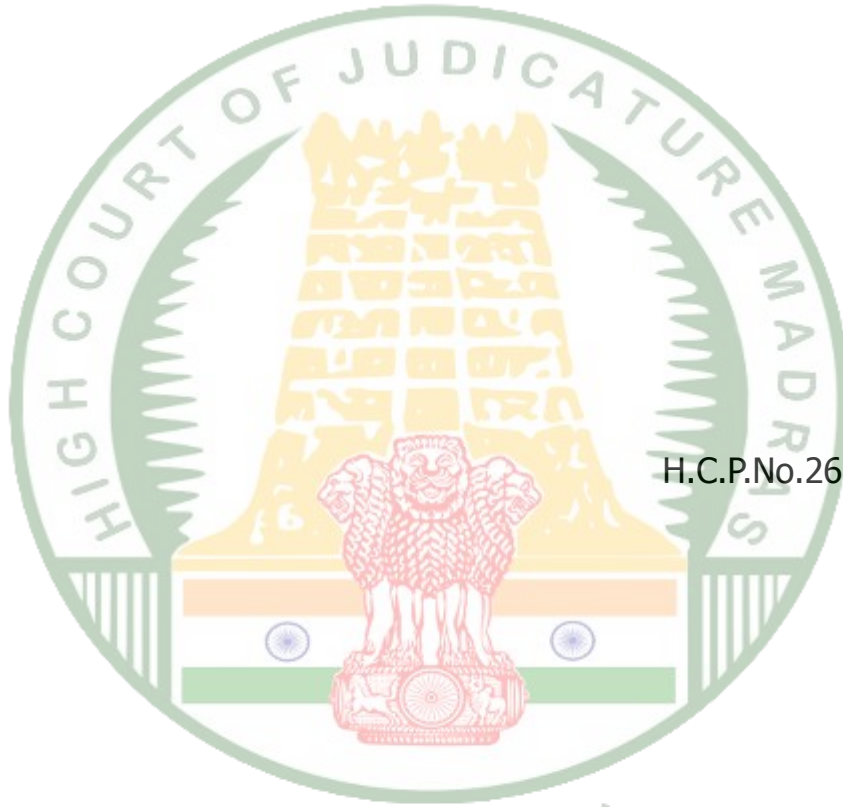
- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Office of Commissioner of Police,
Greater Chennai, Veppery, Chennai.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 5.The Superintendent,
Central Prison, Puzhal, Chennai-66.

M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

AP



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