

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.2636 of 2018

Raghu

.. 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.974/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 Gangadharan, son of Raghu, aged about 28 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 father of the detenu, namely Gangadharan, challenging the legality of the impugned order of detention dated 25.10.2018 passed by the second respondent, in and by which, his 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 would disclose among other things that the order of detention came to be passed on a solitary incident. It is alleged in the grounds of detention that the defacto complainant, namely Sandhiya is the resident of Door No.7/90, Gandhi Street, Gelattipet, Kundrathur, Chennai-69, who is a home maker, and her husband, Girirajan is doing Real Estate business. The elder brother of the defacto complainant, viz., Mohan, fell in love with one Sowbakkiyavathi, daughter of Mr.Babu @ Bogapathi Babu, and this was opposed by Babu @ Bogapathi Babu, but the husband of the defacto complainant decided to fulfil the desire of his brother-in-law, and conducted wedding of Mohan with Sowbakkiyavathi on 28.01.2018 at St.Anthony's Church, Besant Nagar, Chennai. Babu @ Bogapathi Babu, taking revenge of it, used to threaten Girirajan with dire consequences, but it was not taken seriously by him. Sometime during the month of August '2018, Babu @ Bogapathi Babu has sent a new dress to his daughter through his neighbour Mahesh, to patch up the family dispute and thereafter on 30.09.2018, the husband of the defacto complainant was contacted over phone at 14.45 hours by Babu @ Bogapathi Babu and he was informed that Babu wanted to present some jewels to her daughter and hence, asked Girirajan to meet at a certain place. Immediately, Girirajan, the defacto complainant's husband left his house in a motorcycle. However, he was followed by his wife, the defacto complainant and his younger brother Krishnakumar, and while they were proceeding near Vinayakar Temple Tank at Karumariamman Nagar, the defacto complainant noticed that the accused Babu @ Bogapathi Babu along with one Samukutty, Venkat and Kavin were indiscriminately assaulting the complainant's husband with a knife over his head, face and hands, and on seeing the defacto complainant's husband in a pool of blood, they raised an alarm. The defacto complainant also noticed other accused namely Mahesh and Sathishkumar in the said spot and thereafter had fled away from the scene of occurrence. The defacto complainant died on the spot on account of fatal injuries and thereafter, the defacto complainant gave a complaint to the police, which has resulted in registration of a case in Crime No.1182/2018 on the file of T-12, Kundrathur Police Station, for the commission of the offences u/s.147, 148, 302 r/w. 120(b) IPC [ground case] and took up the case for investigation.

3. The assailants were arrested on various dates and on enquiry, they have admitted their involvement in the ground case and in the confession statement, the accused Babu @ Bogapathi Babu, Kavinraj, Gangadharan had admitted that they have murdered Giridharan along with other accused namely Sathishkumar, Manikandan @ Kakka Manikandan, Saranraj @ Saran due to previous

enmity and the said 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 01.10.2018, and the accused were ordered to be remanded to judicial custody till 15.10.2018 as remand prisoners in Central Prison, Puzhal and their remand period was extended till 29.10.2018.

4. The Detaining Authority, on the basis of the material placed, has arrived at the subjective satisfaction that the murder has been committed in a broad daylight in a common public place and that too in a grave manner and that the acts of the detenu, Gangadharan including the other accused in the ground case, 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.3 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 the ground case, 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.

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 CrI.MP.No.7395 of 2014 was available at Page No 281 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 and in the absence of the first page of the bail order, 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 document, 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.281 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, which also contains crucial details as to the details of the accused as well the offences for which charges are framed and the same is missing, the detaining authority should have bestowed its attention to the said aspect and 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 CrI.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 25.10.2018 is hereby set aside. The detenu, viz., Gangadharan,

son of Mr.Raghu, aged 28 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.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To:

- 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.
3. The Superintendent, Central Prison, Puzhal, Chennai
4. The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2636 of 2018

SV(CO)
SP(07/06/2019)

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