

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.04.2019
CORAM:
THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2671 of 2018

Lakshmi

.. Petitioner/Mother of the Detenu

Vs.

1.The Commissioner of Police
Greater Chennai
Vepery,
Chennai - 600 007.

2.The Secretary to Government
Government of Tami Nadu
(Home, Prohibition and Excise Department)
Fort St.George, Chennai - 600 009.

.. 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 order of detention passed by the 1st respondent herein, vide Memo No.618/BCDFGISSSV/2018, dated 31.07.2018 and quashing the same and directing the respondents herein to produce the body and person of the detenu by name Arun @ Poonai Arun, Son of Ganesan, male, aged 25 years now, detained in the Central Prison, Puzhal, Chennai, before this Court and setting him at liberty forthwith.

For Petitioner .. Mr.M.Hussaini Basha

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 Arun @ Poonai Arun, S/o.Ganesan, aged 25 years, challenging the legality of the impugned order of detention dated 31.07.2018 passed by the first respondent, in and by which, her son has been branded as ''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. The detention order came to be passed on this solitary incident. A perusal of the grounds of detention would disclose among other things that the Inspector of Police attached to E-2 Royapettah Police Station, on receiving an intimation from Government Royapettah Hospital, rushed to the spot and recorded the statement of Thiru.M.Rajavel, Gr.I PC, wherein he had stated that on 02.7.2018 at about 21.40 hrs, on receiving a call from Police Control Room to attend the law and order problem at P.M.Dharga, he arrived at the spot at about 21.45 hours and found some persons were playing carom board on the street and when he asked them to disperse, he was attacked by Anand, Aravind, Arun, Ajith Kumar, Appu @ Jinda @ Udayanidhi, Kava Karthi, Arun @ Kozhi Body Arun and others with knives, and they have also damaged his vehicle bearing registration No.TN01 G7141. The defacto complainant, somehow got escaped and with the help of passers by, got admitted in the Hospital. The said Officer on receiving the complaint, registered a case in Crime No.173/2018 on the file of E2 Royapettah Police Station, for the commission of offences under Sections 147, 148, 294(b), 353, 333, 397, 307, 506(ii) IPC r/w.3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act 1992 and took up the case for investigation.

3. During the course of investigation, some of the accused were arrested and the detenu was arrested on 07.7.2018, and he voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, incriminating articles were seized. The detenu was produced before the XVIII Metropolitan Magistrate Court, Saidapet, on the same day, and he was ordered to be remanded to judicial custody till 20.07.2018 as remand prisoner in Central Prison, Puzhal and his remand period was extended till 03.08.2018.

4. The Detaining Authority on being satisfied that the activities of the detenu in the ground case are prejudicial to the maintenance of public peace and order, has arrived at the subjective satisfaction 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 would submit,

admittedly the incident is said to have occurred on 02.07.2018 and it is a solitary case against the detenu and whereas, in the Special Report submitted by the Investigating Officer, the date of occurrence is stated as 22.07.2018 and since it is a vital discrepancy and the Detaining Authority ought to have caused verification with the Sponsoring Authority, but admittedly, he has failed to do so, and that apart, the mistake had occurred in a relied upon document and therefore, the subjective satisfaction derived by the Detaining Authority has to be vitiated and prays for quashment of the impugned order of detention.

6. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority on thorough consideration of the materials, has rightly derived the subjective satisfaction and clamped the order of detention and prays for dismissal of this petition.

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

8. Admittedly, the impugned order of detention came to be passed on the solitary incident (ground case) and as rightly pointed out by the learned counsel appearing for the petitioner, the alleged occurrence had taken place on 02.07.2018, whereas in the Special Report submitted by the jurisdictional Investigating Officer, the date of occurrence was indicated as 22.07.2017, which is a vital discrepancy and the Detaining Authority ought to have sought a clarification from the Sponsoring Authority, before clamping the impugned order of detention, but it has failed on to do so. Further, in the considered opinion of this Court, the above referred document is one of the relied upon documents, but on account of vital discrepancy and non-seeking of clarification from the Authority concerned, the subjective satisfaction derived by the Detaining Authority is liable to be vitiated, and hence on this sole ground, the impugned order of detention warrants interference. It is also brought to the knowledge of the Court that the other co-accused who are involved in the above crime, had approached this Court seeking quashment of detention orders passed against them, in HCP.Nos.1807, 1814, 1817, 1819, 1821, 1856, 1789 and 1983 of 2018 and vide order of this court, it came to be quashed on different grounds.

9. In view of the above, this Habeas Corpus petition is allowed and the detention passed by the first respondent in Memo

No. No.618/BCDFGISSSV/2018, dated 31.07.2018 is hereby set aside. The detenu, viz., Arun @ Poonai Arun, Son of Mr.Ganesan, aged 25 years, now confined in 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

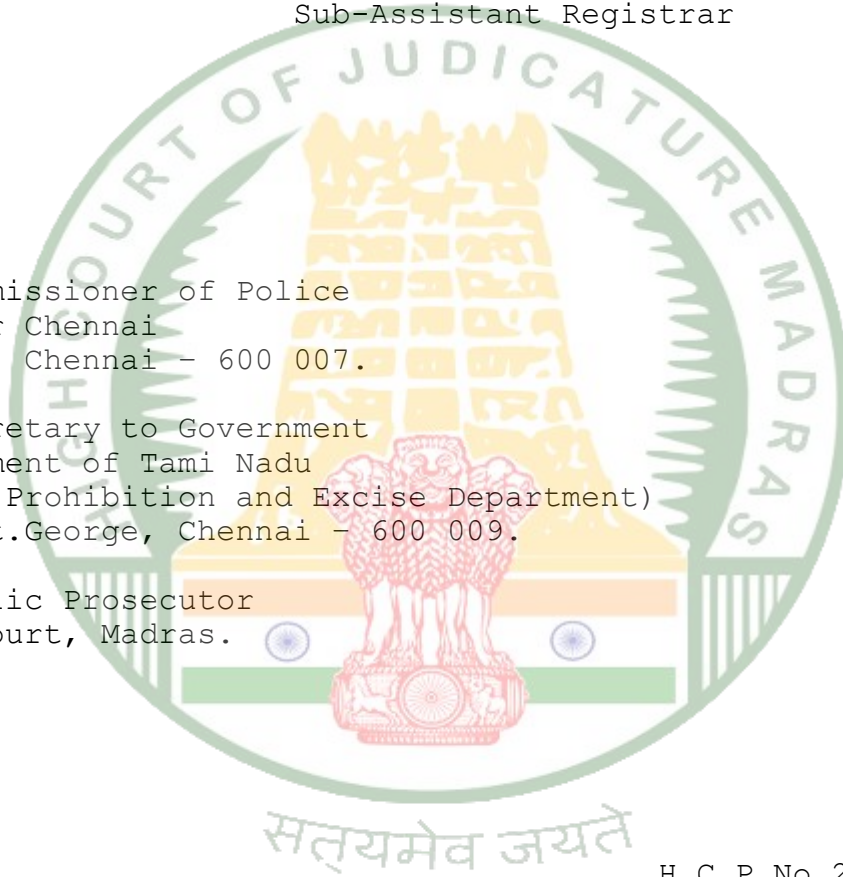
True Copy

Sub-Assistant Registrar

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To:

- 1.The Commissioner of Police
Greater Chennai
Vepery, Chennai - 600 007.
- 2.The Secretary to Government
Government of Tami Nadu
(Home, Prohibition and Excise Department)
Fort St.George, Chennai - 600 009.
- 3.The Public Prosecutor
High Court, Madras.



H.C.P.No.2671 of 2018

NA (CO)
SNI (24/05/2019)

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