

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2659/2018

Divakar

.. Petitioner/Detenu

vs.

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

2.The District Collector & 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 petitioner by name Divakar, son of Prabhakar, aged about 23 years, before this Court now confined in Central Prison, Vellore, set him at liberty and to call for the records pertaining to the order of detention passed in BCDFGISSSV No.88/2018 dated 11.11.2018 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 detenu himself is the petitioner herein and challenging the legality of the impugned order of detention dated 11.11.2018 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), the present petition is filed.

2 As per the Grounds of Detention dated 11.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse cases:

Sl No .	Name of the Police station and Crime No.	Section of law
1	Siva Kanchi PS Cr.No.869/2016	393, 323, 506[ii] IPC & 3 [i] of Tamil Nadu Property [Prevention of Damage & Loss] Act, 1992
2	Kanchi Taluk PS Cr.No.1249/2017	120-B, 147, 148, 307 IPC r/w 3[a] Explosive Substance Act, 1908.

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Thiru.Rose, son of Vadivel, a resident of Rajakulam Post, Kancheepuram Taluk, has lodged a complaint on the file of the Baluchettychatram Police Station alleging that he is running a Dhaba Hotel at Vellore-Chennai National Highway near Musaravakkam Junction and at about 4.15 p.m., on 17.10.2018, when he was in the hotel, a person aged about 25 years, took tiffin in his hotel and declined to pay a sum of Rs.250/- and when it was demanded, the detenu abused and also brandished a knife and tried to assault the defacto complainant and in the process, the said person took away a sum of Rs.2700/- from the cash box. The said person also caused damage to the articles found in the hotel. The people who had assembled there, were also threatened with dire consequences. The Inspector of Police, attached to Baluchettychatram Police Station, based on the complaint, has registered a case in Cr.No.534/2018 for the commission of the offences u/s.294[b], 392, 397, 506[ii] IPC r/w section 3[i] of Tamil Nadu Property [Prevention of Damage and Loss] Act, 1992, [ground case] and took up the case for investigation. During the course of investigation, the Inspector of Police arrested the detenu on 18.10.2018 at about 10.00 a.m., and he voluntarily came forward to give confession statement, which was recorded in the presence of witnesses and in pursuant to the admissible portion of the same, incriminating articles were recovered. The detenu was produced before the Court of Judicial Magistrate, No.1, Kancheepuram on 18.10.2018 and were ordered to be remanded to judicial custody till 01.11.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the acts of the detenu were

prejudicial to the maintenance of the public peace and 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 drawn the attention of this Court to paragraph No.5 of the English Version of the Grounds of Detention and would submit that the detenu has filed an application for bail in the ground case in CMP.No.3589/2018 on the file of the District and Sessions Court-II, Kancheepuram and the same is pending and the Detaining Authority, in order to derive the subjective satisfaction that there is an imminent possibility of the detenu coming out on bail in the ground case and indulging in activities which are prejudicial to the maintenance of public order and peace, has placed reliance upon the order dated 22.05.2014 in CMP.No.724/2014 [Crime No.724/2014 on the file of Siva Kanchi Police Station for the offences u/s.294[b], 397, 506[ii] IPC read with 3[i] of TNPPDL Act] passed by the District and Sessions Court-II, Kancheepuram. However, in paragraph No.5 of the vernacular version, it is stated that the detenu is yet to file an application for bail in the ground case and the same is factually incorrect for the reason that admittedly, the application for bail filed by the detenu in the ground case is still pending for consideration and since the said material fact has been wrongly stated, the same exhibits non-application of mind on the part of the Detaining Authority to the relevant material aspect and therefore, prays for quashment of the impugned order of detention.

5 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.

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, in the vernacular version of the Grounds of Detention, it has been wrongly stated that the detenu in the event of filing an application for bail in the ground case, he is likely to come out on bail, overlooking the fact that the application for bail in CMP.No.3589/2018 filed by him in the ground case, is admittedly, pending consideration on the file of the learned District and Sessions Judge-II, Kancheepuram. In the considered opinion of the Court, the said mistake crept in the vernacular version of the Grounds of Detention would exhibit

non application of mind on the part of the Detaining Authority and the same would vitiate the impugned order of detention and hence, on this sole ground, the detention orders, impugned herein, are liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 11.11.2018 is hereby set aside. The detenu, who is now confined in the Central Prison, Vellore, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
- 2.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent
Central Prison, Vellore.

+1cc to Mr. K.Thenrajan, Advocate, S.R.No. 28209

H.C.P.No.2659/2018

NA (CO)
GN(30/05/2019)

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