

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.2756/2018

Anitha .. Petitioner

vs.

1.The State of Tamil Nadu rep.by
Secretary to Government
Prohibition & 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 calling for the records relating to the detention order dated 05.10.2018 passed by the 2nd respondent in BCDFGISSSV No.77/2018 and quash the same and direct the respondents herein to produce the petitioner's husband Kumaravel son of Veeran, aged 37 years, No.41, Archana Street, Gokulam Colony, Karanai, Pudhucherry, Chengalpattu Taluk, Kancheepuram District, before this Court and set him at liberty forthwith.

For Petitioner .. Mr.M.Murali

For Respondents.. Mr.C.Iyyappa Raj, APP

ORDER

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

The petitioner is the wife of the detenu herein and challenging the legality of the impugned order of detention dated 05.10.2018 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 05.10.2018 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	Guduvancherry PS Cr.No.264/2018	147, 148, 294[b] 324, 326, 506[ii] IPC

3 It is further averred in the Grounds of Detention dated 05.10.2018 that at about 04.30 hours on 29.07.2018, the defacto complainant, viz., Tmt.Sudha, wife of Kamalakannan, a resident of Kadaperi, West Tambaram, appeared before the Sub Inspector of Police, attached to Guduvancherry Police Station and lodged a complaint stating among other things that her husband who is an auto driver, left at about 11.00 p.m., on 28.07.2018 in connection with the job and on early morning hours on 29.07.2018, the brother of her husband, viz., Loganathan, enquired about her husband and when the complainant had informed him about her husband leaving for his job the previous night, the said Loganathan replied that he received a phone call from his brother-in-law Rajendran about the murder of her husband as well as the availability of his head alone without the torso. The Sub Inspector of Police attached to Guduvanchery Police Station, on receipt of the complaint, has registered a case in Cr.No.566/2018 for the commission of the offences u/s.302 and 201 IPC [ground case] and took up the case for investigation. Subsequently, the torso of the body was also recovered. In the meanwhile, the detenu had surrendered in connection with the ground case before the Court of Judicial Magistrate, Tambaram, on 02.08.2018 and was ordered to be remanded to judicial custody and on becoming aware of the same, an affidavit was filed before the court concerned to take police custody of the detenu between 03.08.2018 and 06.08.2018 and in the police custody, the detenu voluntarily came forward to give a confession statement ; in pursuant to the admissible portion of the same, incriminating articles were recovered. After police custody, the detenu was produced before the Judicial Magistrate No.2, Chengalpattu on 06.08.2018 and was ordered to be remanded to judicial custody as a remand prisoner and subsequently, sections were altered into one u/s.147, 148, 302 and 201 IPC. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu was

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 Grounds of Detention and would submit that the detenu filed an application for bail in connection with the ground case in CrI.MP.No.3560/2018 before the learned Principal Sessions Judge, at Chengalpattu and it was dismissed on 31.08.2018 and except relying upon the statement of the detenu's wife given u/s.161[3] Cr.P.C., as to the filing of fresh bail application and the imminent and real possibility of the detenu coming out on bail and indulging in activities which are prejudicial to the maintenance of public order and peace, no other material whatsoever has been produced to show that steps are being taken by the detenu to file an application for bail in connection with the adverse case and in the absence of any such material, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and hence, prays for quashment of the same.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, on due and proper application of mind to the entire materials, had rightly reached the subjective satisfaction and clamped the impugned order of detention and hence, prays for dismissal of this petition.

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

7 A perusal of the grounds of detention would disclose that the detenu was formally arrested in connection with the adverse case in Cr.No.264/2018 registered by Guduvancherry Police Station on 21.08.2018 and lodged at the Central Prison, Puzhal, and however, the Detaining Authority, while deriving at 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, has taken into consideration, the custody of the detenu only in connection with the ground case and not in respect of the adverse case. In the considered opinion of the Court, the said infirmity would definitely vitiate the subjective satisfaction derived by the Detaining Authority in that regard and hence, on this sole ground, the impugned order of detention warrants interference.

8 In the result, the Habeas Corpus Petition is allowed and the impugned order of detention passed by the 2nd respondent dated 05.10.2018 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.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government,
State of Tamil Nadu
Prohibition & 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, Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, chennai 9

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H.C.P.Nos.2756/2018

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

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