

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2771 of 2018

H.Kalaivani

.. Petitioner

Versus

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

2.The Commissioner of Police  
Salem District.

.. 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 of the Detention order in C.M.P.No./60/Goonda/Salem City/2018 dated 30.08.2018 on the file of the second respondent and quash the same and produce the body of petitioner's Husband Harijothi, S/o. Narayanan aged about 31 years confined at Central Prison, Salem and set him at liberty.

For Petitioner : Mr.Udhayakumar for Mr.Karan

For Respondents: Mr.C.Iyyappa Raj  
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the wife of the detenu, who, vide impugned Order of Detention dated 30.08.2018 passed by the 2<sup>nd</sup> respondent by invoking Section 3(2) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Goonda', came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the following case:

| Sl.No | Crime No.                    | Section of law                                                          | Date of occurrence |
|-------|------------------------------|-------------------------------------------------------------------------|--------------------|
| 1.    | Ammamet<br>PS.Cr.No.439/2018 | 174 Cr.PC<br>(Suspicious<br>Death) @ into<br>147, 364, 302<br>& 201 IPC | 26.06.2018         |

It is further averred that on 30.07.2018 at 09.30 hours, while the Sub-Inspector of Police attached to Kitchipalayam Police Station was on duty, the defacto complainant, namely the Thiru.Manikandan, son of Muniappan, who is a resident of Kasthuribai Street, Kitchipalayam, Salem, preferred a written complaint stating among other things that he is a Painter by profession and at about 08.00 hours on 30.07.2018, after collection of money, returned to his house and at that time, four persons aged between 25 and 28 years, waylaid him and asked him to part with the money and when he refused to give money, the said persons disclosed their identities and threatened to give money, failing which, he would not go alive and started assaulting him and when he shouted, upon hearing the screaming, the public gathered and they brandishing knife and threatened the public and taking advantage of the panic situation fled away from the scene of occurrence. The Inspector of Police, Kitchipalayam Police Station, on receipt of the complaint from the defacto complainant, has registered a case in Cr.No.413 of 2018 under Sections 341, 387, 506(ii) IPC (Ground case). The accused namely Briyani Mani @ Manikandan, Mani @ Davu Kani, Harijothi / Detenu, Quarter Murugan @ Murugan were arrested concerned in Ammapet Police Station, Cr.No.439/2018 (adverse cases) had admitted the commission of offence and pursuant to the admissible portion of confession statement, some incriminating articles were seized. The formal arrest of the accused including the detenu were on 14.08.2018 and they were produced before the Judicial Magistrate No.2, Salem on 16.08.2018 and remanded to judicial custody.

3. The Detaining Authority namely, the 2<sup>nd</sup> respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already come to adverse notice in a solitary case and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to inner page no.3 of the

English version of the ground of detention as well as inner page no.3 of the vernacular version of the ground of detention and would submit that in inner page no.3 of the English version, it is stated that the 'accused were admitted the guilty of offence of murder and robbery at VOC nagar, Kitchipalayam on 30.07.2018 and the Inspector of Police recorded their confession statements' and whereas in vernacular version, the fact of accused namely Ramesh @ Vellayan and Quarter Murugan @ Murugan admitted his guilty of offence on 30.07.2018 have completely omitted and since, it is a serious lapse on the part of the Statutory Authority, the Detaining Authority should have sought a clarification and admittedly it has not done so and it would also exhibit non application of mind on the part of the Detaining Authority while signing the vernacular version of the grounds of detention and as such, the impugned order of detention is vitiated and hence, prays for appropriate orders.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the 2<sup>nd</sup> respondent / Detaining Authority, after due and proper application of mind, had rightly reached the subjective satisfaction and clamped the order of detention and hence prays for dismissal of this petition.

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

7. As rightly pointed out by the learned counsel appearing for the petitioner, there is no vernacular version translation as to the admission of the guilty of offence by the accused namely Ramesh @ Vellayan and Quarter Murugan @ Murugan on 30.07.2018 while Inspector of Police attached to Ammapet Police Station recording their confession statement and no vernacular version has been given to the said vital portion. The Detaining Authority while signing the vernacular version of the grounds of detention ought to have noted the said discrepancy and sought clarification from the Statutory Authority and he has failed to do so. In the considered opinion of this Court, the said order would definitely exhibit non application of mind on the part of the Detaining Authority and as such, the same would vitiate the impugned order of detention and hence on the sole ground, the impugned order warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in C.M.P.No./60/Goonda/Salem City/2018 dated 30.08.2018 is set

aside and the detenu, K.Harijothi, S/o. Narayanan aged about 31 years confined at Central Prison, Salem is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,  
Home, Prohibition and Excise Department  
Fort St.George,  
Chennai-600 009.
- 2.The Commissioner of Police,  
Salem District.
- 3.The Superintendent, Central Prison, Salem.
- 4.The Joint Secretary,  
Public(Law & Order), Fort St.George, Chennai.
- 5.The Public Prosecutor  
High Court, Madras.

CSL/27.06.2019

HCP.No.2771 of 2018

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