

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2789 of 2018

Kristober ... Petitioner/Detenu

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The Commissioner of Police /
Detaining Authority,
Greater Chennai, Chennai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the 2nd respondent in No.1000/BCDFGISSSV/2018 dated 29.10.2018 and quash the same and thereby direct the detenu Mr.Kristober, Son of Lawrence, lodged in Central Prison, Puzhal, Chennai to be produced before this Court and set the detenu at liberty.

For Petitioner : Mr.V.Jeevagiridharan
For Respondents: Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

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

The detenu himself is the petitioner and challenging the impugned order of detention dated 29.10.2018 in No.1000/BCDFGISSSV/2018, passed by the second respondent, in and by which the detenu has been branded as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, came forward with this Habeas Corpus Petition.

2. A perusal of the grounds of detention dated 29.10.2018 would disclose that the detenu came to adverse notice in the following cases:

Sl.No.	Police Station and Crime No.	Offences under Sections
1	H-8, Thiruvotriyur Police Station Crime No.1158 of 2018	379 and 511 I.P.C.
2	T-9, Pattabiram Police Station, Cr.No.938 of 2018	399 I.P.C.
3	T-11, Thirunindravur Police Station Cr.No.977 of 2018	392 I.P.C.
4	H-8, Thiruvotriyur Police Station, Cr.No.1167 of 2018	379 I.P.C.
5	T-11, Thirunindravur Police Station. Cr.No.984 of 2018	341, 294(b) and 392 I.P.C.

It is further averred in the grounds of detention that the defacto complainant, namely Ajith, Son of Raja, resident of Anna Nagar, Thirunindravur has lodged a complaint on the file of the Inspector of Police, Thirunindravur Police Station, alleging that at 7.00 hours on 02.10.2018, while he was proceeding by walk at the junction of CTH Road, Nadutkuthagai, a person who came in a motorcycle, wrongfully restrained him and abused him by using filthy language and threatened him at knife point and also asked him to give money. When the defacto complainant expressed that he has no money, the detenu disclosed his identity and snatched Cash of Rs.500/- and a cellphone from the complainant's shirt pocket. The defacto complainant raised alarm and public gathered and they have also been threatened with dire consequences by the detenu and taking advantage of the same, the detenu fled away from the scene of occurrence. Based on the said complaint, the Inspector of Police, Thirunindravur Police Station registered a case in Crime No.987 of 2018 (ground case) for the offences under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) I.P.C.

3. The detenu was arrested on 02.10.2018 at about 11.00 hours and he voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, certain incriminating articles were recovered. The detenu was produced before the Court of Judicial Magistrate No.II, Thiruvallur on 02.10.2018 and remanded to judicial custody till 16.10.2018 and his remand period was extended till 30.10.2019.

4. The second respondent/Detaining Authority, on the basis of materials placed, has derived the subjective satisfaction that the detenu has already come to adverse notice in five cases and he has acted in a manner prejudicial to the maintenance of public order and accordingly, clamped the order of detention and

challenging the legality of the same, the present Habeas Corpus Petition is filed.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to Paragraph No.4 of the grounds of detention and would submit that the detenu is in custody in connection with the adverse cases as well as the ground case and he has filed an application for bail in Crl.M.P.No.5509 of 2018 on the file of the Principal District and Sessions Court, Thiruvallur, seeking bail in the ground case and though it came to be dismissed on 26.10.2018, the Sponsoring Authority has failed to bring it to the knowledge of the Detaining Authority while passing the impugned order of detention. It is the further submission of the learned counsel appearing for the petitioner that as to the real and imminent possibility of the detenu coming out on bail and indulging in activities prejudicial to the maintenance of public order, the Detaining Authority has placed reliance upon the statement of the relatives of the detenu as to the efforts taken to file applications for bail in the 3rd and 5th adverse case and insofar as rest of the cases are concerned, no material whatsoever has been placed for filing of bail applications and therefore, on that ground also, the subjective satisfaction derived by the Detaining Authority is vitiated and hence, prays for quashment of the impugned order of detention.

6. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents would submit that the 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.

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

8. As rightly pointed out by the learned counsel appearing for the petitioner, Paragraph No.4 of the grounds of detention would disclose that the bail application filed in Crl.M.P.No.5509 of 2018 on the file of the Principal District and Sessions Court, Thiruvallur, seeking bail in respect of the ground case is pending on the date of the Detention Order viz., 29.10.2018 and whereas the same came to be dismissed as early as on 26.10.2018 and however, the Sponsoring Authority has failed to bring it to the knowledge of the Detaining Authority while passing the order of detention and that apart, the relatives of the detenu are taking steps to file bail applications only in respect of the 3rd and 5th adverse case and for rest of the cases, no material whatsoever has been produced as to the efforts taken by the relatives of the detenu by filing bail applications.

9. In the considered opinion of the Court, the above said infirmity would definitely vitiate the subjective satisfaction derived by the Detaining Authority.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in No.1000/BCDFGISSV/2018 dated 29.10.2018 is set aside. The detenu viz., Kristober, Son of Lawrence, aged 28 years, confined at Central Prizon, Puzhal is directed to be released forthwith unless his custody/detention is required in connection with any other case/proceedings.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

Jvm

To

1. The Secretary,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.
2. The Commissioner of Police /
Detaining Authority,
Greater Chennai, Chennai.
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.

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VBA (CO)
SP(10/06/2019)