

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.2796 of 2018

Janaki ... Petitioner

-vs-

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

2.The Commissioner of Police /
Greater Chennai,
Vepery, Chennai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the Detention Order in Memo No.BCDFGISSSV/1025/2018 dated 08.11.2018 passed by the 2nd respondent under Tamil Nadu Act 14 of 1982 and quash the same and direct the respondent to produce the detenu Suresh @ Olai Suresh, Son of Thangamani, male, aged 36 years, now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.K.P.S.Saravanakumar

For Respondents: Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu and challenging the impugned order of detention dated 08.11.2018 in Memo No.1025/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 08.11.2018 would disclose that the detenu came to adverse notice in the following cases:

Sl.No.	Police Station and Crime No.	Offences under Sections
1	P-1, Pulianthope Police Station, Crime No.225 of 2018	452, 341, 294(b), 324, 506(ii) I.P.C. r/w. 34 I.P.C.
2	P-1, Pulianthope Police Station, Crime No.228 of 2018	341, 294(b), 392, 397, 336, 506(ii) I.P.C. r/w.34 I.P.C.
3	P-1, Pulianthope Police Station, Cr.No.480 of 2018	341, 294(b), 323, 392, 397, 336 and 506(ii) I.P.C.

It is further averred in the grounds of detention that the defacto complainant, namely Mari, Son of Loganathan, residing at Shastri Nagar, Pulianthope, Chennai-12, has lodged a complaint on the file of P1- Pulianthope Police Station stating among other things that at about 8.00 hours on 07.10.2018, while he was proceeding by walk near the Slaughter House Bus Stop, Dr.Ambedkar College Road, three persons wrongfully restrained him and abused in filthy language and threatened him to give cash and when it was refused, one of them disclosed their identity and the detenu and one of the accused assaulted the complainant by hands and also asked one of the accused, namely Rajathi to take out his weapon. Immediately, the said person brandished a knife and kept on the complainant's stomach and two others snatched cash of Rs.600/- from the complainant's pocket and they also tried to assault the defacto complainant. The detenu raised alarm and public gathered and the accused also threatened them at knife point and taking advantage of the panic situation, they fled away from the scene of occurrence. The Inspector of Police, P1 Pulianthope Police Station, on the basis of the said complaint, registered a case in Crime No.523 of 2018 (ground case) for the commission of offences under Section 341, 294(b), 323, 392, 397, 336 and 506(ii) I.P.C. r/w. 34 I.P.C. The detenu along with two other accused were arrested at 14.00 hours on 07.10.2018 and they voluntarily came forward to give confession statements, based on which certain incriminating articles were recovered. The detenu was produced before the Court of V Metropolitan Magistrate, Egmore, Allikulam, Chennai on 07.10.2018 and ordered to be remanded till 17.10.2018 and his remand period was extended till 14.11.2018.

3. The second respondent/Detaining Authority, on consideration of the materials placed, has derived the subjective satisfaction that the detenu has already come to adverse notice in three 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.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to Page Nos.138 and 139 of the Booklet and would submit that Page No.138 of the Booklet pertains to English version of the initial order of remand in the ground case dated 07.10.2018 and the vernacular version of the same has been given in Page No.139 of the Booklet and it is not a correct translation of the English version and since the detenu knows only Tamil, he has been confused and he was deprived from making an effective representation for revoking the order of detention and that apart, in the light of the said vital discrepancy, the Detaining Authority ought to have sought clarification from the Sponsoring Authority and since the said authority has failed to do so, the subjective satisfaction derived by the Detaining Authority is to be vitiated and therefore, prays for quashment of the impugned order of detention.

5. 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.

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, Page No.138 of the Booklet is the English version of the order of remand of the detenu in the ground case and Page No.139 of the Booklet is the translated version and there is a vital discrepancy as to the array of the accused as A-1 in the ground case is Mr.Rajathi and whereas in the Vernacular version, it is stated as A-3. The detenu has signed and received the impugned order of detention by signing it in Tamil and therefore, he developed confusion and he was prevented from making an effective representation for revoking the order of detention and in the light of the said vital discrepancy in the relied upon document, the Detaining Authority, ought to have sought clarification from the Sponsoring Authority, but it has failed to do so. In the considered opinion of the Court, the above said infirmity would definitely vitiate the subjective

satisfaction derived by the Detaining Authority.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in No.1025/BCDFGISSV/2018 dated 08.11.2018 is set aside. The detenu viz., Suresh @ Olai Suresh, Son of Thangamani, aged 36 years, confined at Central Prizon, Puzhal, Chennai is directed to be released forthwith unless his custody/detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The Commissioner of Police /
Greater Chennai,
Vepery, Chennai.
- 3.The Superintendent, Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary,
Public(Law & Order), Fort St.George, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No.2796 of 2018

EV(CO)

CSL/04.06.2019

WEB COPY