

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 08.04.2019

CORAM

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

HCP.No.2821 of 2018

P.Shanthi

.. Petitioner/Mother of Detenu

Versus

1.The State of Tamil nadu
rep.by its Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai-60 009.

2.The District Magistrate and
District Collector,
Thiruvallur District, Thiruvallur.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent on 27.10.2018 in order No.32/BCDFGISSSV/2018 against the detenu Kumar @ Rajkumar son of Porchezhiyan, Hindu, male aged about 24 years, who is now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.P.Parthiban

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

ORDER

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

The petitioner is the mother of the detenu, who, vide impugned Order of Detention dated 27.10.2018 passed by the 2nd respondent by invoking Section 2(f) 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 cases:

Sl. No.	Crime No.	Section of law	Date of occurrence
1.	Minjur PS, Cr.No.211/2017	342, 506(ii), 302 IPC@ 450, 114, 506(ii), 302 IPC r/w 109 IPC	25.03.2017
2.	Minjur PS, Cr.No.95/2018	147, 148, 341, 302IPC	26.02.2018

It is further averred in the ground of detention that on 13.08.2018 at about 11.15 hours, the defacto complainant viz., Christopher, resident of Ennore, Chennai-57 had lodged a written complaint as to the assault and murder of his brother JamesPaul by four accused. The Inspector of Police, Minjur Police Station has registered a case in Cr.No.451/2018 registered a case in Cr.No.451 of 2018 under Section 147, 148, 341, 324, 302 IPC r/w 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act. In the meanwhile, Mr.kumar along with seven associates surrendered before the Court of Judicial Magistrate No.II, Poonamallee on 14.08.2018 and ordered to be remanded to judicial custody which include the detenu. On 23.08.2018, the detenu was produced before the Judicial Magistrate No.II, Ponneri and he was ordered to be remanded to judicial custody till 06.09.2018 and his remand period was periodically extended upto 29.10.2018.

3. The Detaining Authority namely, the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already came to adverse notice in two cases and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned orders 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 would submit that the detenu has filed the application for bail in CrI.M.P.No.5434 of 2018 on 22.10.2018 and the same is pending. The primordial submission by the learned counsel for the petitioner is that admittedly requisition for police custody was made and the Court of Judicial Magistrate No.II has granted police custody, vide order dated 20.06.2018 and drawn the attention of this Court to Page Nos.122 and 123 of the booklet and would submit that Page No.2 of the order in Pg.Nos.122 and 123 is wholly illegible and since it is a relied upon document, it is a duty obligatory on the part of the Detaining Authority to furnish legible copy and on account of non furnishing legible

copy, the detenu was deprived from making effective representation for revoking the impugned order of detention and prays for quashment of the same.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly 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, the requisition made for police custody in respect of the detenu has been positively considered by the jurisdictional Court and police custody was granted and the said order was available in Page Nos.122 and 123 of the booklet and perusal of the same would disclose that second page of the said order is wholly illegible and the detenu was prevented from making effective representation, on account of furnishing of the illegible copy of the said order and hence on the sole ground, it warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in No.32/BCDFGISSSV/2018 dated 27.10.2018 is set aside and the detenu namely, Kumar @ Rajkumar son of Porchezhiyan, Hindu, male aged about 24 years, who is now confined at Central Prison, Puzhal, Chennai is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//
Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai-60 009.
2. The District Magistrate and
District Collector,
Thiruvallur District, Thiruvallur.

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.

HCP.No.2821 of 2018

BS (CO)

RRS (08/07/2019)



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