

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2942 of 2018

Dhavamani

.. Petitioner

Versus

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

2.The Commissioner of Police,
Salem City.

3.The Superintendent,
Central Prison,
Salem-7.

.. 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 entire records leading to the detention of his husband Kabali @ Subramani, aged 26 years, son of Thangavel, 3/3 Vedippukkal Parai, Oothukadu, Seelnaickanpatty, Salem, presently detained in Central Prison, Salem, under Act 14/1982, as a "Goonda" vide the detention order dated 22.09.2018 in C.M.P.No.66/"Goonda"/Salem City/2018 on the file of the 2nd respondent herein, directing to produce the person or body of the detinue.

For Petitioner : Mr.B.Vasudevan
 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 22.09.2018 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:

<i>Sl.No.</i>	<i>Crime No.</i>	<i>Section of law</i>	<i>Date of occurrence</i>
1.	Shevapet PS 392 IPC Cr.No.223/2018		19.05.2018
2.	Kondalampatty PS 392 IPC Cr.No.361/2018		14.06.2018

and in both cases, he is in custody. It is further stated in the grounds of detention that one Thangamani, son of Krishnan, a resident of Seelanaickanpatty, Salem District / defacto complainant, has lodged a

complaint on 05.08.2018 at 20.15 hours to the Sub-Inspector of Police, Annadanapatty Police Station stating among other things that he is working as a small savings collection-staff in private institution and when he was walking near Electricity Office, Seelanaickanpatty, he was waylaid by the detenu and brandishing knife, took a sum of Rs.1,050/- and also a mobile phone and in that process, he also abused the complainant by using unparliamentary words. When the defacto complainant raised an alarm, public gathered and he also threatened the public with dire consequences and taking advantage of the situation, fled away from the scene of occurrence with stolen articles. The Sub Inspector of the above said Police Station, based on the complaint given by the defacto complainant has registered a case in Cr.No.464/2018 for the commission of offence under Section 341, 294(b), 392, 397, 506(ii) IPC. The detenu was arrested at about 18.30 hours on 06.08.2018 and he voluntarily came forward to give a confession statement and admissible portion of the same led to recovery of incriminating articles. The detenu was produced before the Court of Judicial Magistrate No.4, Salem on the same day and he was ordered to be remanded to judicial custody till 03.09.2018 and further his remand period was extended till 01.10.2018.

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 come to adverse notice in two cases and on being satisfied that his acts are prejudicial to the maintenance of public order and peace has 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 for the petitioner has drawn the attention of this Court to the grounds of detention as well as Page Nos.99 of the booklet and would submit that it is obligatory on the part of the Sponsoring Authority to furnish particulars to the detenu as to his arrest and incarceration in connection with the ground case to the relative and admittedly, it has not been done. Since, the constitutional obligation has not been adhered to and complied with, the impugned order of detention requires interference and hence 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. A perusal of the grounds of detention would disclose that there is no specific averment as to the intimation of the arrest of the detenu in connection with the ground case to the relatives. In Page No.99 of the booklet, the arrest memo is available and even in the arrest memo, the signature of the relative, who said to have been informed, found place. The constitutional obligation is cast upon the Sponsoring Authority to inform the arrest of the detenu to the relative and admittedly, it is not done so and the Detaining Authority has failed to advert to the said infirmity and it also exhibits non application of mind on the part of the Detaining Authority to the relevant and important aspect and hence, on the sole ground, the impugned order of detention warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in C.M.P.No.66/"Goonda"/Salem City/2018 dated 22.09.2018 is set aside and the detenu namely, Kabali @ Subramani, aged 26 years, son of Thangavel who is now confined in Central Prison, Salem is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

[M.S.N., J] [M.N.K., J]
23.04.2019

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Internet : Yes/No
Index : Yes/No

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M.SATHYANARAYANAN, J.,
AND
M.NIRMAL KUMAR, J.,
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