

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
H.C.P.No.2865/2018

Mageshwari

.. Petitioner/
Mother of the detenu

vs.

1. The Government of Tamil Nadu rep.by
Secretary, Home, Prohibition & Excise [XVI] Department
Fort St George, Chennai 600 009.

2. The Commissioner of Police
O/o.The Commissioner of Police
Greater Chennai, Veppery, Chennai. .. 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 in detention order Memo No.1027/BCDFGISSSV/2018 dated 12.11.2018 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son Prabhakaran @ Sunil aged about 24 years the detenu now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner .. Mr.K.Kannan
For Respondents .. Mr.C.Iyyappa Raj, APP

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The mother of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 12.11.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a 'Goonda' under the provisions of section 3[1] of the Tamil Nadu Prevention of dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the present petition is filed.

2 As per the Grounds of Detention dated 12.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i)Adverse cases:

Sl No .	Name of the Police station and Crime No.	Section of law
1	P2 Otteri Police Station Crime No.42/2012	147, 148, 341, 324, 506 [ii] IPC r/w 149 IPC
2	K1 Sembium Police Station Crime No.600/2015	147, 148, 341, 324, 307, 506[II] ipc @ 147, 148, 341, 326, 307, 506[II] IPC r/w 149 IPC
3	Sevvapet Police Station Tiruvallur, Crime No.303/2016	302, 34 IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Thiru Ganesan, son of Sankaravel, a resident of Otteri, Chennai-12, has lodged a complaint on the file of P2 Otteri Police Station, alleing among other things that at about 2100 hours on 13.10.2018, the pushcart in which he is carrying on the business of selling Briyani was wrongfully restrained by the detenu and the detenu threatened him with dire consequences to part with money and when the complainant answered in negative, the detenu brandished a knife and tried to assault the complainant and in the process, snatched a sum of Rs.1000/- from the pocket of the complainant and when the complainant raised alarm, public gathered nearby and they were also threatened with dire consequences and taking advantage of the situation, he escaped from the scene of crime. The Inspector of Police, attached to the said Station, based on the complaint from the defacto complainant, has registered a case in Cr.No.635/2018 for the commission of the offences u/s.341, 294 [b], 336, 392, 397 and 506[ii] IPC [ground case] and took up the case for investigation. During the course of investigation, he effected the arrest of the detenu on 14.10.2018 at about 10.00 hours and when examined, he came forward to give a confession statement and based on the admissible portion of the same, incriminating articles were recovered. The detenu was produced before the Court of V Metropolitan Magistrate,

Allikulam on 14.10.2018 and was remanded to judicial custody and the remand period was also extended till 23.11.2018. The Detaining Authority on being satisfied that the above said activities of the detenu are prejudicial to the maintenance of public order, has derived the subjective satisfaction and as such, branded him as a "Goonda" and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present petition is filed.

4 The learned counsel for the petitioner would submit that the adverse notice in respect of the detenu has been taken based upon 3 adverse cases which are said to have been taken place on 20.01.2012 ; 25.04.2015 and 19.08.2016 respectively and admittedly, none of the cases can be similar to that of the ground case and that the incident in the ground case took place nearly after two years and by placing reliance upon the stale adverse cases, the subjective satisfaction derived by the Detaining Authority as to the prejudicial acts of the detenu to the maintenance of public peace and order, is vitiated and therefore, prays for quashment of the detention order.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

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

7 As rightly pointed out by the learned counsel for the petitioner, three adverse cases pertain to the years 2012, 2015 and the last of such adverse case was on 19.08.2016 and whereas, the alleged incident relating to the ground case took place on 13.10.2018. The adverse case are stale in nature and that too, not similar to that of the ground case and by placing reliance upon the stale cases, in the considered opinion of the Court, the subjective satisfaction derived by the Detaining Authority as to the activities of the detenu are prejudicial to the maintenance of public peace and order, is vitiated and hence, on this sole ground, the detention order, impugned herein, is liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated

12.11.2018 is hereby set aside. The detenu, who is now confined in the Central Prison, Puzhal, Chennai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary, Government of Tamil Nadu
Home, Prohibition & Excise [XVI] Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police
O/o.The Commissioner of Police
Greater Chennai, Veppery, Chennai.
3. The Superintendent
Central Prison, Puzhal, Chennai-66.
4. The Joint Secretary (Law & Order)
Fort St.George, Chennai-9.
5. The Public Prosecutor,
Madras High Court, Madras.

सत्यमेव जयते

H.C.P.No.2865 of 2018

GJ(CO)
CS/25/06/2019

WEB COPY