

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.2867/2018

K.Chithra

...Petitioner/Wife
of the Detenu

vs.

1. The State of Tamil Nadu rep.by
Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

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 calling for the records in connection with the order of detention passed by the 2nd respondent in BCDFGISSSV No.35/2018 DATED 26.11.2018 against the petitioner husband Ambethkar @ Ambeth, son of Narayanan, aged about 32 years who is now confined at Central Prison, Cuddalore, 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.Parthipan

For Respondents.. Mr.C.Iyyappa Raj, APP

ORDER

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

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 26.11.2018 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 A perusal of the Grounds of Detention dated 26.11.2018 passed by the 2nd respondent herein, would disclose that the impugned order of detention came to be passed based on the solitary incident which is said to have taken place on the morning hours on 13.08.2018. According to the Sponsoring Authority, the brother of the defacto complainant, viz., James Paul, was engaged in Pipeline Sub Contract work and supplying materials to Power Max Company at North Chennai Thermal Power Station and he was proceeding in his car at about 10.00 a.m., on 13.08.2018 and a group of 8 rowdy elements, armed with knives, waylaid the car and indiscriminately attacked the brother of the defacto complainant, as a result of which, he died. The Inspector of Police, attached to Minjur Police Station, upon receipt of the complaint from the defacto complainant, has registered a case in Cr.No.451/2018 for the commission of the offences u/s.147, 148, 341, 302, 324 IPC read with 3 of Tamil Nadu Property [Prevention of Damage and Loss] Act, [ground case] and took up the case for investigation. The detenu along with two other assailants had surrendered before the Court of II Metropolitan Magistrate, Egmore, Chennai on 27.08.2018 and on 30.08.2018, the detenu and the other assailants were taken into police custody and subsequently, produced before the said court and was remanded to judicial custody and the period of remand has been extended upto 26.11.2018. 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.

3 The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.4 of the Grounds of Detention and would submit that admittedly, the impugned order of detention came to be passed on the solitary case and in order to derive at the subjective satisfaction that the detenu is acting in a manner prejudicial to the maintenance of public order and peace and as such, he has been branded as Goonda, has observed that the detenu is usually committing crimes. Admittedly, no material whatsoever has been produced by the Sponsoring Authority before the Detaining Authority to derive such a subjective satisfaction as to the habit or act of the detenu in usually committing crime and in the absence of such a vital material, the subjective satisfaction derived by the

Detaining Authority in that regard, is vitiated and therefore, prays for quashment of the detention order.

4 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.

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

6 As rightly pointed out by the learned counsel for the petitioner, though it is averred in paragraph No.4 of the Grounds of Detention, the detenu is usually committing crimes and acting in a manner prejudicial to the maintenance of public order and peace, admittedly, no material whatsoever has been placed by the Sponsoring Authority before the Detaining Authority to derive the subjective satisfaction in that regard and in the absence of such material, the said satisfaction is vitiated and hence, on this sole ground, the detention order, impugned herein, is liable to be set aside.

7 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 26.11.2018 is hereby set aside. The detenu, who is now confined in the Central Prison, Cuddalore, 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 (AD IV)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The District Magistrate and District Collector
Thiruvallur District, Thiruvallur.
- 3.The Public Prosecutor,
Madras High Court, Madras.

4.The Superintendent
Central Prison, Cuddalore.

5.The Joint Secretary to Government,
(Law and order),
Fort. St.George, Chennai - 600 009.

H.C.P.No.2867/2018

RSI (CO)

RRS (28/05/2019)



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