

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2885 of 2018

Sasikala

.. 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,
Greater Chennai Police,
Vepery, Chennai.

.. 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 pertaining to the order of detention passed in No.982/BCDFGISSV/2018 dated on 26.10.2018 passed by the 2nd respondent and set aside the same and directing the respondents to produce the petitioner's husband Suresh @ Dagul Suresh male aged about 27 years before this Court now confined in Central Prison, Puzhal, Chennai set him at liberty.

For Petitioner : Mr.K.Thenrajan

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 26.10.2018 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:

<i>Sl.No.</i>	<i>Crime No.</i>	<i>Section of law</i>	<i>Date of occurrence</i>
1.	N2 Kasimedu Police Station Cr.No.352/2018	302 IPC	12.04.2018
2.	N2 Kasimedu Police Station Cr.No.658/2018	294(b), 323, 324, 307 & 506(ii) IPC	26.07.2018
3.	N4 Fishing Harbour Police Station Cr.No.385/2018	341, 324, 294(b), & 307 IPC	16.08.2018

It is further averred in the grounds of detention that one Mr.Sudarmani, son of Devaraj, a resident of Power Kuppam Housing Board, Kasimedu,

on the file of N2 Kasimedu Police Station, alleging that after fishing, the defacto complainant returned home and while so, one Dagul Suresh of Singaravelar Nagar has wrongfully restrained and threatened and abused him to part with the money for the purpose of having liquor and it was replied in negative and he was threatened with dire consequences and on brandishing knife over his neck, took away a sum of Rs.750/- from his shirt pocket and when the defacto complainant raised an alarm, the public gathered and they were also threatened by brandishing knife and taking advantage of the situation fled away from the scene of occurrence. Based on the complaint, the Inspector of Police, N2 Kasimedu Police Station has registered a case in Cr.No.855/2018 under Sections 341, 294(b), 323, 336, 427, 392 & 506(ii) IPC (ground case) and took up the investigation. The detenu was arrested at about 13.30 hours on 07.10.2018 and he voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized. The detenu was produced before the Court of XVI Metropolitan Magistrate Court, George Town and was ordered to be remanded to judicial custody till 17.10.2018 and his remand period was extended till 31.10.2018.

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 three 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 for the petitioner would submit that admittedly, the detenu is in custody in connection with the second adverse case and in the ground case, the Detaining Authority in order to derive subjective satisfaction as to the real and imminent possibility of the detenu, coming out on bail which are prejudicial to the public order and peace, has also placed reliance upon the release of the detenu on bail in third adverse case in N-4, Fishing Harbour Police Station in Cr.No.385 of 2018, for the commission of offences under Sections 341, 342, 294(b) and 307 IPC and admittedly, no copy of the order evidencing release of the detenu on the bail in the third adverse case is available and in the absence of such vital material, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated 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. As rightly pointed out by the learned counsel for the petitioner, as regards the subjective satisfaction derived as to the release of the detenu in the third adverse case, no material whatsoever has been placed in the booklet and in the absence of such vital materials, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated 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 No.982/BCDFGISSV/2018 dated on 26.10.2018 is set aside and the

M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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detenu namely, Suresh @ Dagul Suresh male aged about 27 years who is now confined in Central Prison, Puzhal, Chennai 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]
15.04.2019

Internet : Yes/No
Index : Yes/No

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To

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