

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM:

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

H.C.P.No.2930/2018

Sesuraj

..

Petitioner

vs.

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

2.The Commissioner of Police
Chennai City Police, Greater Chennai
Commissioner office, Vepery,
Chennai 600 007.

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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 No.1057/BCDFGISSSV/2018 dated 20.11.2018 on the file of the 2nd respondent herein and set aside the same as illegal and produce the detenu Sesuraj, son of Periya Nayakam, aged about 45 years, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner.. Mr.Ilayaraja Kandasamy

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

ORDER

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

The detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 20.11.2018 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 20.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse cases:

S1 No .	Name of the Police station and Crime No.	Section of law
1	M1 Madhavaram Police Station Cr.No.610/2018	341, 294[b], 3979 & 506 [ii] IPC
2	M2 Madhavaram Milk Colony Police Station Cr.No.346/2018	394 and 506[ii] IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Mr.Pandiyan, son of Pappu Nadar, a resident of Periyathoppu, Manali, Chennai-68, has lodged a complaint on the file of M2 Madharavam Milk Colony Police Station, alleging among other things that he is running a scrap iron shop near Kosappur Junction at 200 Feet Bypass Road and on 26.10.2018 at about 09.30 hours, when he was attending his business, two persons came in a motorcycle and halted near the shop and enquired about an address and having raised a suspicion, he asked them to move away and immediately, the accused developed a quarrel with the complainant and they demanded a sum of Rs.500/- for purchasing brandy and it was refused by the complainant and he was threatened with dire consequences by brandishing a knife and also abused him by using unparliamentary words and also disclosed their identity and forcefully taken away a sum of Rs.1500/- and mobile phone and when the complainant raised alarm, public gathered nearby and they were also threatened with dire consequences and taking advantage of the situation, they escaped from the scene of crime. The Inspector of Police, attached to the M2 Madhavaram Milk Colony Police Station, based on the complaint from the defacto complainant, has registered a case in Cr.No.347/2018 for the commission of the offences u/s.341, 294[b], 336, 427, 392 read with 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 along with the co-accused Selvaraj on 26.10.2018 at about 12.00 hours and when examined, they came forward to give confession statements and based on the admissible portion of the same, incriminating articles were recovered. The detenu was produced before the Court of Judicial Magistrate, Thiruvotriyur on 26.10.2018 and was remanded to judicial custody till 09.11.2018 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 has drawn the attention of this Court to inner page No.6, paragraph No.4 of the English version of the Grounds of Detention as well as paragraph No.4 of the vernacular version of the same and would submit that though in page No.36 of the Arrest Intimation of the detenu was said to have been given to one Lakshmi, sister of the detenu, necessary averment in that regard has not been found place in paragraph No.4 of both the English as well as the vernacular version and as such, there was a total non-application of mind on the part of the Detaining Authority as to the said relevant aspect and hence, on this sole ground, the impugned order of detention warrants interference and 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, in paragraph No.4 of both the English and Vernacular version of the Grounds of Detention, the arrest intimation of the detenu given to his sister has not been stated and since it is a vital omission, the Detaining Authority ought to have sought for a clarification from the Sponsoring Authority and admittedly, it was not so and the Detaining Authority has also failed to refer to the relied upon document in that regard and therefore, it would exhibit the non-application of mind on the part of the Detaining Authority 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 20.11.2018 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

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Department of Prohibition & Excise [Home]
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Chennai City Police, Greater Chennai
Commissioner office, Vepery,
Chennai 600 007.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai-66.
- 5.The Joint Secretary to Government,
Public(Law & Order) fort St.George,
Chennai-9.

सत्यमेव जयते

H.C.P.No.2930/2018

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