

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2973 of 2018

Sangeetha

.. Petitioner

Versus

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

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

.. 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 relating to the detention of her husband Kanniyappan son of Dharman, male aged about 32 years is presently lodged in Central Prison, Puzhal at Chennai and has been detained under Act 14/82 as a "Goonda" vide detention order dated 19.11.2018 on the file of the 2nd respondent herein, made in Memo No.1048/BCDFGISSSV/2018 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this court and set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Rajavelu

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 19.11.2018 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 solitary ground case. It is further alleged in the ground of detention that one Mr.Kalavathy, wife of Anandan, a resident of Teynampet, Chennai-18, lodged a complaint on the file of the E-5 Foreshore Estate Police Station complaining about the murder of his son namely Siva, who later came to know that a gang of 10 persons assaulted his son with deadly weapons and committed his murder. Based on the complaint, the Inspector of Police of the above said Police Station has registered a case in Cr.No.381/2018 for the commission of offence under Sections 147, 148, 341, 302 IPC. The detenu and other accused were arrested at about 20.00 hours on 21.10.2018 and they voluntarily came forward to give a

confession statement and admissible portion of the confession statement

led to recovery of some incriminating articles. The detenu and other accused were produced before the Court of XXIII Metropolitan Magistrate, Saidapet, Chennai on 22.10.2018 and they were ordered to be remanded to judicial custody till 02.11.2018 and further, their remand period was extended till 30.11.2018

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, has already come to adverse notice in solitary cases and on being satisfied that his acts are prejudicial to the maintenance of public order and peace, has clamped the impugned order 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 attention of this Court to paragraph nos.3 and 4 of the grounds of detention and would submit that instead of stating the name of the detenu viz., Kanniyappan, name of one Mr.Raja, co-accused name has been incorporated and the Detaining Authority has proceeded as if the said Mr.Raja is the detenu and since, it is a vital discrepancy, the Detaining

Authority should have sought clarification from the Sponsoring Authority and it has not been done and that apart, wrong stating of name in Page Nos.3 and 4 is a material defect and prays for quashment of the impugned order of detention.

5. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that there is an inadvertent mistake crept in paragraph Nos.3 and 4 and however, the same would not vitiate the order of detention, as it is not a relied upon document 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, though the name of the detenu is Kanniyappan, in paragraph Nos.3 and 4 of the grounds of detention, name has been stated as one Mr.Raja, one of the co-accused in the ground case and since, it is a vital discrepancy, the Detaining Authority ought to have sought clarification from the Sponsoring Authority and admittedly, it has not been done and it also

exhibits non-application of mind on the part of the Detaining Authority as to the said 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 Memo No.1048/BCDFGISSSV/2018 dated 19.11.2018 is set aside and the detenu namely Kanniyappan son of Dharman, aged about 32 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]
23.04.2019

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Internet : Yes/No

Index : Yes/No

To

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Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
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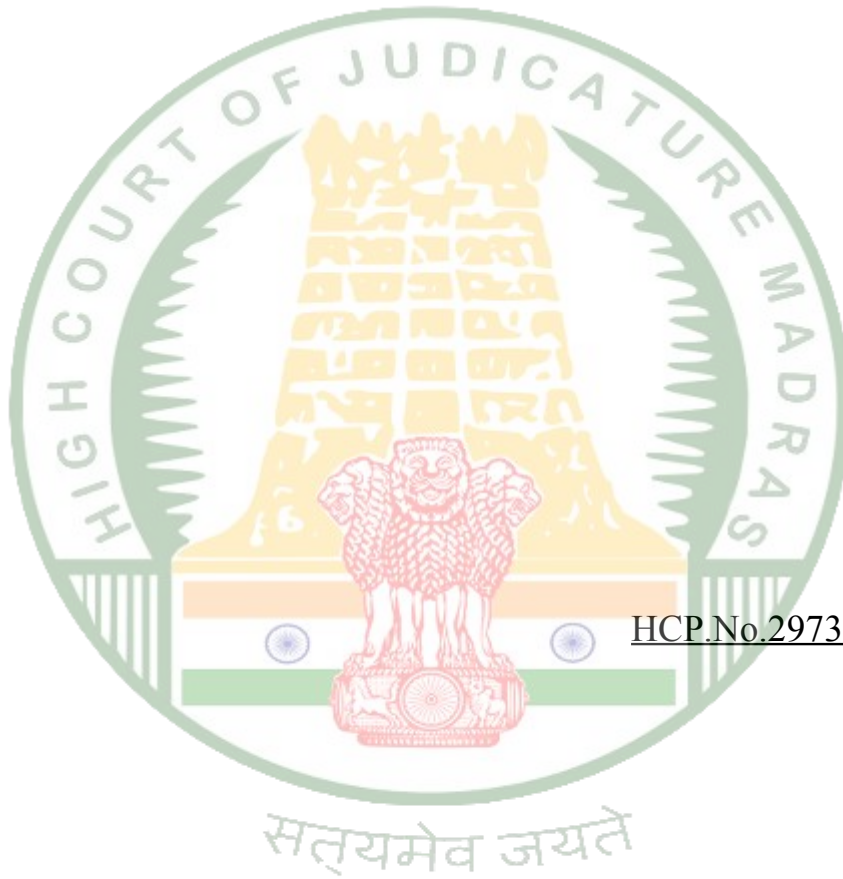
3.The Public Prosecutor
High Court, Madras.

M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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