

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.Nos.2922, 2923, 2924, 2925, 2926, 2927 & 2929/2018

HCP No.2922/2018

Vani ... Petitioner
vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner's son Gopal @ Bala, son of Subramanian, male, aged about 29 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.1049/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 thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

HCP No.2923/2018

Sowmiya ... Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner's brother Murthy, son of Veerappan, male, aged about 35 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.1050/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 thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

HCP No.2924/2018

Loganathan

... Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner's son Rajesh, son of Loganathan, male, aged about 34 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.1047/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 thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

HCP No.2925/2018

Venkat

.. Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner's cousin, Syed Ali @ Appun, son of Abdul Samad, male, aged about 28 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.1052/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 thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

HCP No.2926/2018

Kalyani

...

Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner's son Raja, son of Thulukkanam, male, aged about 34 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.1045/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 thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

HCP No.2927/2018

Sowmiya

.. Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner's husband Narayanan, son of Egappan, male, aged about 33 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.1051/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 thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

HCP No.2929/2018

Loganathan

... Petitioner

vs.

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

2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records leading to the detention of the petitioner's son Ajithkumar, son of Dhandapani, male, aged about 29 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.1046/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 thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioners in all
HCPs ... Mr.V.Parthiban for
Mr.M.Rajavelu

For Respondents in all
HCPs ... Mr.C.Iyyappa Raj, APP

COMMON ORDER

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

All the Habeas Corpus Petitions are taken up together and are disposed of by the following common order as the ground/solitary case is one and the same for all the detenus and they were arrested and incarcerated in connection with the said case.

2 The mother of the detenu, viz., Gopal @ Bala, is the petitioner in HCP.No.2922/2018 ; the sister of the detenu, viz., Murthy, is the petitioner in HCP.No.2923/2018 ; the father of the detenu viz., Rajesh, is the petitioner in HCP.No.2924/2018 ; the cousin of the detenu, viz., Syed Ali @ Appun, is the petitioner in HCP.No.2925/2018 ; the mother of the detenu, viz., Raja, is the petitioner in HCP.No.2926/2018 ; the wife of the detenu, viz., Narayanan, is the petitioner in HCP.No.2927/2018 and the uncle of the detenu, viz., Ajithkumar, is the petitioner in HCP.No.2929/2018 and challenging the legality of the impugned orders of detention dated 19.11.2018 passed by the 2nd respondent, in and by which, the detenus are branded as ''Goondas'' 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 Habeas Corpus Petitions are filed.

2 A perusal of the Grounds of Detention dated 19.11.2018 passed by the 2nd respondent herein, would disclose among other things that the defacto complainant, viz., Tmt.Kalavathy, wife of Anandan, has lodged a complaint on the file of E5 Foreshore Estate Police Station, alleging among other things as to the pendency of the cases registered against her son Siva, at Abiramapuram Police Station and Kodambakkam Police Station and therefore, he developed enmity with several persons. The son of the defacto complainant did not return till 22.00 hours on 19.10.2018 and at that time, a friend of her son contacted her and made enquiry as to the colour of the dress worn by Siva and the lover of Siva, viz., Manju, also contacted the defacto complainant and informed her about the inflicting of assault upon Siva at SCB Road, Mandaveli and murdered him. The defacto complainant rushed to the spot and identified the body of her son and came to know that a gang of 10 persons had assaulted her son and caused his death. The Inspector of Police attached to E5 Foreshore Estate Police Station, based on the complaint from the defacto complainant, has registered a case in Cr.No.381/2018 for the commission of the offences u/s.147, 148, 341, 302 IPC [ground case] and took up the case for investigation. During the course of investigation, he effected the arrest of the detenus on the following days:-

[1] Detenus Raja and Ajithkumar [HCP.Nos.2926 and 2929/2018] on 21.10.2018 at about 20.00 hours and they voluntarily came forward to give confession statements and based on the admissible portion of the same, the role played by the other accused came to light and some incriminating articles were recovered.

[2] Detenus Rajesh, Gopal @ Bala [HCP.Nos.2922 and 2924/2018] and the other accused, viz., Kanniappan, Chittibabu @ Chitti and Appu @ Pudur Appu on 22.10.2018 at about 06.00 hours near Swimming Pool at Marina and they voluntarily came forward to give confession statements and the admissible portions of the same had led to the discovery of facts and the incriminating articles.

[3] Detenus Murthy and Narayanan [HCP.Nos.2923 & 2927/2018] were arrested on 23.10.2018 at about 08.00 hours and they also voluntarily came forward to give confession statements, the admissible portions of which led to the recovery of some incriminating articles.

[4] The Detenu Syed Ali @ Appun [HCP.No.2925/2018] was arrested on 30.10.2018 at about 08.00 hours and he voluntarily came forward to give confession statement and in pursuant to the admissible portion of the same, incriminating article was seized. The detenus were produced before the Court of the jurisdictional

Magistrate, and were ordered to be remanded to judicial custody and their remand period was also extended periodically. The Detaining Authority on being satisfied that the above said activities of the detenus are prejudicial to the maintenance of public peace and order, has derived the subjective satisfaction and as such, branded them as ''Goondas'' and detained them under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned orders of detention and challenging the legality of the same, the present petitions are filed.

3 Mr.V.Parthiban, learned counsel for the petitioners has drawn the attention of this Court to paragraph No.3 of the Grounds of Detention and would submit that admittedly, all the detenus had filed applications for bail in the ground case, which are pending on the file of the learned Principal Sessions Judge, Chennai and in order to derive at the subjective satisfaction as to the real and imminent possibility of the detenus coming out on bail and indulge in activities which are prejudicial to the maintenance of public order and peace, has relied upon the order dated 18.11.2014. granting bail in CrI.MP.No.17395/2014 concerned in Crime No.809/2014 on the file of F1 Chindadripet Police Station and the primordial submission of the learned counsel for the petitioners is that the said similar case cannot be said to be similar in nature for the reason that the Court below, while granting bail in CrI.MP.No.17395/2014, had taken into consideration the order granting bail to the co-accused in the said case by this Court in CrI.OP.No.29720/2014 dated 12.11.2014 and admittedly, none of the co-accused had moved this Court for bail and as such, the subjective satisfaction derived by the Detaining Authority in that regard is wholly vitiated and hence, on this sole ground, the impugned orders of detention warrants interference and prays for quashment of the detention orders.

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 orders of detention and prays for dismissal of the present petitions.

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 petitioners, the similar order relied upon by the Detaining Authority dated 18.11.2014 in CrI.MP.No.17395/2014 concerned in Crime No.809/2014 on the file of Chindadripet Police Station, may not be said to be the similar case for the reason that paragraph No.6 of the order dated 18.11.2014, made in CrI.MP.No.17395/2014, the concerned Court has taken note of the

order of this Court, granting bail to the similarly placed accused in CrI.OP.No.29720/2014 and admittedly, in the case on hand, none of the detenus had moved this Court for grant of bail and as such, it cannot be considered as a similar case and therefore, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and hence, on this sole ground, the detention orders, impugned herein, are liable to be set aside.

7 In the result, the Habeas Corpus Petitions are allowed and the detention orders, impugned herein, passed by the 2nd respondent dated 19.11.2018 are hereby set aside. The detenus, who are now confined in the Central Prison, Puzhal, Chennai, are directed to be released forthwith unless their presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai, Vepery,
Chennai - 7.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai-66.
- 5.The Joint Secretary,
Home Department,
Fort St. George, Chennai-9.

H.C.P.Nos.2922, 2923, 2924,
2925, 2926, 2927 & 2929/2018

cp[co]
srg 29/05/2019