

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2905 of 2018

Rabiya

.. Petitioner

Versus

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George,
Chennai-600 009.

2.The Commissioner of Police/
Detaining Authority
City Police Office,
Huzur Road,
Coimbatore City,
Coimbatore-18.

.. 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 relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 08.12.2018 on the file of the second respondent herein made in proceedings Memo C.NO.133/G/IS/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely S.Riyazudeen, S/o.sulaiman, aged 23 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
 For Respondents : Mr.C.Iyyappa Raj
 Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the mother of the detenu, who, vide impugned Order of Detention dated 08.12.2018 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.	Coimbatore City, B-2 R.S.Puram Police Station Cr.NO.155/2018	379 IPC	13.11.2017
2.	Coimbatore City, E-1 Singanallur Police Station Cr.No.1295/2018	379 IPC	01.11.2018
3.	Coimbatore City, B-2 R.S.Puram Police Station Cr.No.1301/2018	392 IPC	15.11.2018

It is further alleged that the defacto complainant namely Mrs.V.Suguna, a resident of Indira Nagar, Selvapuram, Coimbatore has lodged a complaint on the file of the Inspector of Police, Crime, B-2 R.S.Puram Police Station, stating among other things that at about 21.15 hours on 15.11.2018, she and her husband were standing near Hotel Annapoorna, a person later identified as Riyazudeen, came in a motorcycle, stopped near the complainant and suddenly snatched the gold chain and when public started chasing him, he fell down and started to run. He drawn a knife and threatened the public with dire consequences and taking advantage of the situation fled away from the scene of occurrence and based on the complaint, the Sub Inspector of Police of the above said police Station has registered a case in Cr.No.1302/2018 under Section 392 r/w 397 and 506(ii) (ground case). The detenu was arrested on 15.11.2018 and during the course of interrogation, he voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement, certain incriminating articles were seized. The arrest intimation was sent through mobile phone by way of message. The detenu was produced before the Court of Judicial Magistrate No.I, Coimbatore on 16.11.2018 and remanded to judicial custody till

29.11.2018 and his remand period was periodically extended till 13.12.2018.

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 on behalf of the detenu has drawn the attention of this Court to Page no.136 of the booklet and would submit that the arrest intimation in connection with the ground case was sent through SMS through Mobile No.8124074054 and there is no material whatsoever has been produced that the said mobile phone belongs to either the mother or relative of the detenu and there is no delivery report has also been available. In the absence of the same, valuable right guaranteed to the detenu as to the intimation of his arrest, steps be taken by the detenu to get him out has been denied and hence, prays for appropriate orders.

5. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that in the post detention representation dated 20.12.2018, the petitioner did not raise any prejudice in that regard and would further add 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 appearing for the petitioner that though in Page No.136 of the booklet, arrest intimation related to the ground case said to have been sent through mobile phone, it is not clear that the message has been delivered to the concerned address and it is not clear whether the concerned addressee is his relative or his friend. In the absence of vital information, it cannot be said that the arrest intimation has been given to the concerned relative or friend and in the absence of such material, valuable right guaranteed to the detenu as to

the further steps taken to get him out in the said case has been vitiated and hence on the sole ground, the impugned order warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in Memo C.NO.133/G/IS/2018, dated 08.12.2018 is set aside and the detenu namely S.Riyazudeen, S/o.Sulaiman, aged 23 years who is confined at Central Prison, Coimbatore, 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]
16.04.2019

Internet : Yes/No
Index : Yes/No

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To

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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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