

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.04.2019
CORAM:
THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P. No.2909 of 2018

E.Gothawari ... Petitioner/Mother of detenue

Vs.

- 1.The Principal Secretary to Government
Home, Prohibition & Excise(XVI) Department, Secretariat
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Krishnagiri District. ... 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 with the detention order in S.C.No.62/2018 dated 02.12.2018 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of the petitioner's son one named Duke Arul @ Arulmani, S/o.Ellappan aged about 23 years, now confined at Central Prison, Salem, before this Court and set him at liberty forthwith.

For Petitioner... Mr.V.Parthiban
for Ms.R.Thulasi
For Respondents... Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

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

The petitioner, who is the mother of the detenu namely Duke Arul @ Arulmani, S/o.Thiru Ellappan, aged 23 years, challenging the legality of the impugned order of detention dated 02.12.2018 passed by the second respondent, in and by which, her son has been branded as ''Goonda'' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu

Act 14/1982), came forward to file the present Habeas Corpus Petitions.

2. A perusal of the grounds of detention would disclose that the detenu came to adverse notice in the following four cases :-

Sl.No.	Name of the Police station and Crime No.	Section of law
1.	Omalur Police Station Crime No.599/2018	394 IPC @ 395 r/w. 397 IPC
2.	Omalur Police Station Crime No.600/2018	392 IPC @ 395 r/w.397 IPC
3.	Omalur Police Station Crime No.601/2018	394 IPC @ 395 r/w. 397 IPC
4.	Nagarasampatti Police Station	379 IPC @ 392 IPC

It is stated in the grounds of the detention that on 12.11.2018 at about 8.00 a.m. the defacto complainant viz, Sakthivel, along with three others appeared before the Inspector of Police, Barur Circle, Nagarasampatti Police Station and lodged a complaint. They have also produced the accused viz., Duke Arul @ Arulmani and also a cash of Rs.1,050/-, a knife and a YAMAHA two wheeler bearing registration No.TN70-M-1147. It is averred in the complaint that the defacto complainant owned a TATA ACE Vehicle bearing registration No.TN70-K-9200 and on 12.11.2018 at about 7.00 pm., he proceeded from Nagarasampatti to load the goods. On his way, he parked his vehicle near a petrol bunk in Sallampatti Junction to have a cup of tea. At that time, the accused who came in his vehicle, stopped it near the tea shop and came nearer to him and took out a knife and threatened him to part with the money, he possessed. Immediately, the defacto complainant handed over the cash of Rs.1,050/- to him. The defacto complainant raised an alarm and the persons who were near the tea shop came for rescue. On seeing the public gathering there, the accused took cool drink bottles from the tea shop and hurled it over the public and attempted to escape from the scene of occurrence. But, his efforts had failed and the accused was caught hold by the public. The accused was brought to the police station by the defacto complainant and three others, and based on the complaint, the Inspector of Police registered a case in Cr.No.199/2018 for the commission of offences under Sections 392, 506(ii) IPC [ground case] and took up the case for investigation.

3. During the course of investigation, the detenu voluntarily came forward to give confession statement and admissible portion of the confession statement was recorded.

The detenu was produced before the District Munsif cum Judicial Magistrate, Pochampalli, on 12.11.2018 and he was ordered to be remanded to judicial custody as remand prisoner at Central Prison, Salem till 26.11.2018, and thereafter, remand period was extended till 10.12.2018.

4. The Detaining Authority, on being satisfied that the activities of the detenu in the ground case are prejudicial to the maintenance of public order, has clamped the impugned order of detention, branding the detenu as "Goondas" and challenging the legality of the same, this Habeas Corpus Petition is filed.

5. Mr.V.Parthiban, the learned counsel appearing for the petitioner would submit that though the detenu is in remand in all the adverse cases and in the ground case, and he did not file any bail applications, the Detaining Authority in order to derive the subjective satisfaction, has inferred that there is a real and imminent possibility of the detenu coming out on bail and would indulge in similar activities, which are prejudicial to the maintenance of public order, and clamped the order of detention. The Sponsoring Authority have relied upon the statement that the relatives of the detenu are taking steps to bail him out, but he failed to find out that there were no materials whatsoever have been produced in the enclosed booklet, that was supplied to the detenu in support of the said statement and in the absence of the same, the subjective satisfaction derived by the Detaining Authority in that regard has to be vitiated and hence, prays for quashment of impugned order of detention.

6. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that after due and proper application of mind, the Detaining Authority has rightly clamped the impugned order of detention and prays for dismissal of this Habeas Corpus Petition.

7. This Court considered the rival submissions and also perused the materials placed before it.

8. As rightly pointed out by the learned counsel appearing for the petitioner, a perusal of the booklet would disclose no materials whatsoever have been placed to show that the relatives of the detenu are taking steps to file application for bail in respect of the detenu, in the cases in which he was under arrest and in the absence of such vital material, the subjective satisfaction derived by the Detaining Authority has to be vitiated and hence, on this sole ground, the impugned order of detention warrants interference.

9. In view of the above, this Habeas Corpus petition is allowed and the detention order passed by the second respondent in S.C.No.62/2018, dated 02.12.2018 is hereby set aside. The detenu, viz., Duke Arul @ Arulmani, aged 23 years, S/o.Thiru.Ellappan, who is now confined at Central Prison, Salem, 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

To:

- 1.The Secretary to Government
Home, Prohibition & Excise(XVI) Department, Secretariat
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Krishnagiri District.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Superintendent,
Central Prison,
Salem.
- 5.The Joint Secretary,
Public(Law & Order)
Fort St.George, Chennai.

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