

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.2918 of 2018

V.Gopi

... Petitioner

Vs.

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

2.The Commissioner of Police
Salem City
Salem.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to direct the respondents to produce the petitioner's brother by name detenu Arun, S/o.Venkatachalam, aged about 27 years before this Court, now confined in Central Prison, Salem and to set him at liberty and to call for the records pertaining to the order of detention passed in CMP.No.76/Goonda/Salem City/2018 dated 08.11.2018, passed by the second respondent and set aside the same.

For Petitioner .. Mr.T.Muruganantham

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 brother of the detenu namely Arun, S/o.Venkatachalam, aged 27 years, challenging the legality of the impugned order of detention dated 08.11.2018 passed by the second respondent, in and by which, his brother has been branded as 'Goonda' under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, 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 two cases :-

Sl.No .	Name of the Police station and Crime No.	Section of law
1.	Ammapet Police Station Crime No.157/2018	387, 506 (ii) IPC
2.	Ammapet Police Station Crime No.443/2018	147, 364(A) IPC

It is stated in the grounds of the detention that on 10.10.2018, at about 18.45 hours, the defacto complainant viz., Chandrasekaran, aged 38 years, who is the resident of Ponnammampet, Salem, came to Ammapet Police Station and lodged a complaint to the Sub Inspector of Police, Ammapet Police Station stating that on 10.10.2018 at about 17.00 hours, he left his house with a small hand bag containing 5 sovereigns of gold chain for the purpose of pledging and while he was nearing Ponnammampet Railway Gate Bus Stop, a person aged about 27 years waylaid him and threatened him to hand over the bag and he also disclosed his identify and brandished the knife and snatched the hand bag from the defacto complainant and started to run away. Since the defacto complainant raised an alarm, the public gathered there to catch the accused, but he brandished the knife in all directions and threatened the public with dire consequences and fled away from the scene of occurrence along with the hand bag. Upon receipt of the complaint, the Sub Inspector of Police registered a case in Cr.No.689/2018 for the commission of offences under Sections 341, 392 r/w 397 and 506 (ii) IPC [ground case] and took up the case for investigation.

3. During the course of investigation, the detenu was arrested by the Inspector of Police on the same day at 19.45 hours, and on enquiry, he voluntarily came forward to give confession statement and based on the admissible portion of the confession statement, incriminating articles were seized and the detenu was produced before the Court of Judicial Magistrate No.V, Salem, on 11.10.2018 and he was ordered to be remanded to judicial custody as remand prisoner at Central Prison, Salem till 24.10.2018, and thereafter, remand period was extended till 16.11.2018.

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. The learned counsel appearing for the petitioner has drawn the attention of this Court to paragraph No.6 of the grounds of detention and would submit that though the detenu was arrested in the ground case on 11.10.2018, he was formally arrested in the adverse case only on 26.10.2018 and that in none of the cases, he has filed any application seeking bail, but 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 Detaining Authority has also placed reliance upon the statement of the wife of the detenu and pointed out that the said statement relates to only two cases registered by Ammapet Police Station. However, the detenu is in remand and custody with two adverse cases as well as in the ground case and the said aspect has not been taken into consideration by the Detaining Authority and accordingly, there is a discrepancy in passing the impugned order of detention by the second respondent and hence, the order of detention is vitiated on account of non-application of mind on the part of the Detaining Authority and 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 taking into consideration all the relevant facts, the Detaining Authority has rightly derived the subjective satisfaction 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, the statement of the wife of the detenu is available at Page 122 of the booklet and that steps are being taken to bail out the detenu, in respect of two cases registered before Ammapet Police Station. It is to be noted that two adverse cases and a ground case has been registered by the Ammapet Police Station and admittedly, the detenu is in custody in all the three cases, however, the statement would disclose that steps are being taken only in two cases, and that the Detaining Authority ought to have sought a clarification from the Sponsoring Authority before deriving the subjective satisfaction, but admittedly that was not done by the Detaining Authority and the said discrepancy would prove non-application of mind on the part of the Detaining Authority in deriving the subjective satisfaction, 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 C.M.P.No.76/Goonda/SALEM CITY/2018, dated 08.11.2018 is hereby set aside. The detenu, viz., Arun S/o.Venkatachalam, aged 27 years, 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(CS)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police
Salem City
Salem.
- 3.The Superintendent,
Central Prison, Salem
- 4.The Joint Secretary to Government
Public (Law and order)
Fort St.George, Chennai - 600 009.
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

H.C.P. No.2918 of 2018

A.SK(11/07/2019)

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