

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2921/2018

Mahalakshmi

.. Petitioner

VS.

1.The State of Tamil Nadu,
rep. By the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
The Greater Chennai City,
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 petitioner husband's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 30.10.2018 on the file of the second respondent herein made in proceedings BCDFGISSSV No.1004/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner husband namely Ruban Babu (a) Ruban son of Shanmugam, aged 38 years before this Court and set the petitioner husband at liberty from detention, now petitioner husband detained at Central Prison, Puzhal, Chennai-600 066.

For Petitioner .. Mr.C.C.Chellappan

For Respondents .. Mr.C.Iyyapparaj, APP

ORDER

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

The petitioner is the wife of the detenu, viz., Ruban Babu (a) Ruban son of Shanmugam, aged 38 years herein, and challenging the legality of the impugned order of detention dated 30.10.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a "GOONDA" under the provisions of section 3[1] of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present habeas corpus petition.

2 As per the Grounds of Detention dated 30.10.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases and in connection with the 3rd adverse case, he was arrested and remanded to judicial custody:-

i)Adverse cases:

<i>Sl No</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	S-12 Chitlapakkam Police Station Cr.No.1248/2017	302, 341,34 IPC
2	S-10 Pallikaranai Police Station Cr.No.721/2018	341, 294(b) 324,506(i) IPC
3	S-13 Chromepet Police Station Cr.No.626/2018	341,294(b),384, 506(ii) IPC

3 It is further averred in the Grounds of Detention that the

defacto complainant, viz., T.Maharajan son of Mayandi, a resident of Royapuram, Chennai-13, and he was a call taxi driver by profession and at about 5.45 hours on 04.10.2018, after dropping the passenger near Adyar Ananda Bhavan, Chrompet, Chennai, was waiting for passengers at the above spot and at that time, three persons engaged the services of the complainant to take them to beach and when the complainant replied that he was waiting for passengers, the said three persons wrongfully restrained and abused him in filthy language and out of the said 3 persons, two of them caught hold of the complainant and one of them took out a knife and put the same near his stomach and also threatened with dire consequences and asked him to part away with money and the complainant replied in negative, the other person snatched Rs.950/- from the shirt pocket. When he raised alarm, they threatened him that he would be finished off and in the process, all the three persons disclosed their identity also. All of them rushed to the nearby Bunk shop and took cool drinks bottle and broken the same on the road and the public nearby also ran away on account of panic created and taking advantage of the situation, the detenu along with the other accused fled away from the scene of crime. The Inspector of Police attached to S13 Chrompet Police Station has registered a case in crime No.627/2018 for the commission of the offences u/s.341, 294[b],

336, 427, 392, 397 and 506[ii] IPC [**ground case**] and took up the case of investigation. The Inspector of Police effected the arrest of the detenu along with the co-accuse on 04.10.2018 at about 18.30 hours and the detenu voluntarily came forward to give a confession statement which was recorded in the presence of witnesses and in pursuant to the admissible portion of the same, incriminating articles were recovered. The detenu was produced before the Court of Judicial Magistrate, Tambaram, on 05.10.2018 and was ordered to be remanded to judicial custody till 17.10.2018 and his remand period was further extended till 31.10.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of public order and peace and as such, branded him as a "Goonda" and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present petition is filed.

4 The learned counsel for the petitioner has drawn the attention of this Court to the original Remand Order in English version which is available at page No.233 and the vernacular version of the translation of the same, which is available at page NO.235 and would submit that while translating the Remand Order, the words appeared in

the original order is "remand request perused. Prima facie satisfied". The same has been translated as "குற்றம் செய்ததாக திருப்தி அடையப்பட்டது" [satisfied as regards commission of the crime] and pointed out that it since on account of improper translation, the detenu was prevented from making an effective representation and that apart, in the light of the same material mistake, the Detaining Authority at least ought to have sought for a clarification from the Sponsoring Authority and since, he has failed to do so, prays for quashment of the impugned Order of Detention.

5 *Per contra*, the learned Additional Public Prosecutor would submit that a cumulative reading of both orders would disclose that the learned Magistrate has prima facie recorded the satisfaction to remand the detenu and accordingly, passed an order and even in the post detention representation, the detenu did not point out the same and as such, the detenu is not entitled to raise the said ground in this petition and prays for dismissal of this petition.

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

7 In the original remand order [English version], the learned Magistrate prima facie found on the basis of the materials placed to remand the detenu and whereas, in the vernacular version of the

translation, it has been recorded as if satisfaction as to the commission of the crime has been reached. In the considered opinion of the Court, the guilty as to the commission of the offence/crime can be reached only at the conclusion of the trial and on account of improper translation in respect of the remand orders passed in the 3rd adverse case and the ground case, the detenu is put to prejudice for the reason that he is prevented from making an effective representation for revoking the order of detention and in the process, the valuable rights guaranteed under Article 22 of the Constitution of India, has been violated and hence, on the sole ground, the impugned Order of Detention is vitiated and is liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 30.10.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Puzhal, Chennai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

[M.S.N, J.] [M.N.K., J.]
29.04.2019

Internet : Yes
AP
To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai-600 007.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent,
Central Prison, Puzhal,
Chennai-600 066.



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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

AP



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