IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2944/2018

Jothi ... Petitioner/Wife of the Detenue

vs.

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 26.11.2018 in Memo No.1075/BCDFGISSV2018 against the petitioner husband Siva @ Sivakumar, male aged 28 years, son of Jalaluthin who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner .. Mr.S.Senthil Vel
For Respondents.. Mr.C.Iyyappa Raj, APP
Additional Public Prosecutor

ORDER

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

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 26.11.2018 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

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14/1982), came forward to file the present habeas corpus petition.

2 As per the Grounds of Detention dated 26.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i)Adverse cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	S6 Sankar Nagar PS.Cr.No.2122/2016	294[b], 323 IPC & section 3 of TNPPDL Act 1992 r/w.506[ii] IPC
2	S6 Sankar Nagar PS Cr.No.2252/2016	341, 294[b], 392, 506[ii] IPC
3	S6 Sankar Nagar PS Cr.No.3228/2016	341, 294[b], 397, 506[ii] IPC
4	S6 Sankar Nagar PS Cr.No.538/2018	379 IPC
5	S6 Sankar Nagar PS Cr.No.890/2018	294[b], 324, 325, 307, 506[ii] IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Saravanan, a resident of Sankar Nagar, Chennai-70, has lodged a complaint on the file of S6 Sankar Nagar Police Station on 29.10.2018 at morning hours stating among other things that he was proceeding by walk and when he was near the Petrol Bunk Service Road, an auto bearing Registration No.TN-07-BK-3489 came there and intercepted the complainant and three persons got down from the auto and they abused the complainant by using unparliamentary words and one of them [detenu herein] disclosed his identity and name and pressed the neck of the complainant and asked his associates to take out the money and accordingly, one of the accused has snatched a sum of Rs.1200/- and the cellphone from the possession of the complainant and when the complainant raised alarm, public gathered and they were also threatened with dire consequences and taking advantage of the situation, they fled away from the scene of crime. The Inspector of Police, S6 Sankar Nagar Police Station, based on the complaint received from the complainant, has registered a case in crime No.891/2018 for the commission of the offences u/s.341, 294[b], 427, 336, 397 and 506[ii] IPC [ground case] and took up the case for investigation. The Inspector of Police, effected the arrest of the detenu and the other accused at about 13.00 hours on 29.10.2018 and they voluntarily came forward to give confession statements which was recorded in the presence of witnesses and in pursuant to the

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admissible portion of the same, incriminating articles were recovered. The detenu was also formally arrested in the 4th and 5th adverse cases and was produced before the Court of Judicial Magistrate, Tambaram on the same day and was ordered to be remanded to judicial custody till 09.11.2018 and his remand period was further extended till 05.12.2018. 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 peace and order 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 invited the attention of this Court to paragraph No.4 of the Grounds of Detention and would submit that the Detaining Authority, in order to derive at the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail in the ground case as well as in the 4th and 5th adverse cases and indulging in activities which are prejudicial to the maintenance of public order and peace, has relied upon similar order of bail in Crl.MP.No.8238/2018 concerned in R1 Mambalam Police Station Cr.No.325/2018 and also drawn the attention of this Court to page Nos.573 to 579 of the Booklet - original English Version as well as the vernacular version of the said similar order and would submit that the entire contents of the said orders found place in the said pages are wholly illegible and as such, the detenu was, not only prevented from making an effective representation for revoking the order of detention ; but also the Detaining Authority has also failed to apply his mind to the illegible copies and since it is the relied upon document, the Detaining Authority is under obligation to apply his mind or at least, he should have sought for a clarification from the Sponsoring Authority and since the above said requirements have not been done, prays for quashment of the impugned order of detention.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that while receiving the order and the Grounds of Detention, the detenu has signed only in Tamil and the vernacular version of the similar case bail order is legible and that apart, the detenu did not make any complaint while he submitted a representation, which also came to be disposed of promptly and prays for dismissal of this petition.

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

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7 A perusal of the above cited similar order, made available at page Nos.573 to 579 of the Booklet would disclose that most of the contents of the order are wholly illegible. In the considered opinion of the Court, not only the detenu was prevented from making an effective representation on account of furnishing of illegible copies for revoking the order of detention, since it is the relied upon document, it is obligatory on the part of the Detaining Authority at least to seek a clarification from the Sponsoring Authority and an endeavour should have been made to get a clear/clean copy and admittedly, it was not done so and hence, on this sole ground, the detention order, impugned herein, 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 26.11.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Puzhal-II, Chennai, 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(CCC)

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Sub Assistant Registrar

To

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai.

3.The Public Prosecutor,
Madras High Court, Madras.

4.The Superintendent
Central Prison, Puzhal, Chennai.

5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

H.C.P.No.2944/2018

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