

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2933 of 2018

A.Chandran

.. Petitioner

Versus

1.The State of Tamil Nadu
rep. by its Secretary to Government
Department of Prohibition and Excise (home)
Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, 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 records in No.1101/BCDFGISSSV/2018 dated 01.12.2018 on the file of second respondent herein and set aside the same as illegal and produce the detainee Sasi @ Black Berry, son of Chandran, aged about 22 years, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraj Kandasamy

For Respondents : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu, who, vide impugned Order of Detention dated 01.12.2018 passed by the 2nd respondent by invoking Section 2(b) 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.	T-1 Ambattur Police Station Cr.No.2180/2018	341, 294(b), 323, 307 IP @ 341, 294(b), 323, 307, 302 IPC	06.11.2018

It is further averred in the ground of detention that one Mr.Vinothkumar, son of Stalin, a resident of Kamarajapuram, Ambattur, Chennai-53 on the morning hours on 07.11.2018, has lodged a complaint on the file of the Inspector of Police, Ambattur Police Station stating among other things that at about 08.00 hours on the same day, when he was walking near Murugan Temple, Ambattur Market, three persons wrongfully

restrained and brandishing knife, threatened him with dire consequences to part with the money and in the process, one of them has snatched a sum of Rs.600/- from his pocket and the detenu snatched his cellphone from the pocket and when he raised an alarm, public gathered on the spot and they were also threatened with dire consequences and taking advantage of the panic situation, they fled away from the scene of occurrence. The Inspector of Police of the above said Police Station, on receipt of the complaint, has registered a case in Cr.No.2181/2018 under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC. All the three accused were arrested on 07.11.2018 at about 12.00 noon and they voluntarily came forward to give confession statements and as per the admissible portion of the confession statements, certain incriminating articles were seized. The detenu was produced before the Court of Judicial Magistrate, Ambattur, Chennai on 07.11.2018 and was ordered to be remanded to judicial custody till 20.11.2018 and his remand period was further extended till 04.12.2018.

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 one case

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 for the petitioner has drawn the attention of this Court to Paragraph No.4 of the ground of detention and would submit that the detenu is in custody in connection with the adverse case as well as in the ground case and in order to derive the subjective satisfaction as to the real and imminent possibility in coming out on bail and indulging in activities which are prejudicial to the public order and peace, reliance has been placed on two cases in F-1 Chintadripet Police Station in Cr.No.809 of 2014 and N4 Redhills Police Station in Cr.No.368 of 2014 and insofar as Cr.No.809 of 2014 is concerned, the first Additional Sessions Judge, Chennai has granted bail, vide order dated 18.11.2014 in CrI.M.P.No.17395 of 2014, by placing reliance upon the order granting bail by this Court in CrI.M.P.No.29720 of 2014 dated 12.11.2014 and insofar as the Redhills Police Station, Cr.No.369 of 2018 is concerned, the Principal Sessions Judge, Thiruvallur has granted bail on 06.07.2018 and in the said case, the concerned accused was not having any antecedents and however in the present case on hand, the

detenu is having adverse case under Section 302 IPC and the ground case for the offences under Sections 392 and 397 IPC and as such, the similar cases relied on by the Detaining Authority cannot said to be same and therefore, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and hence prays for quashment of the same.

5. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit 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 for the petitioner, the two similar cases relied on by the Detaining Authority cannot said to be similar cases for the reason that in the first case, the Principal Sessions Judge has granted bail, based upon the fact that this Court has granted bail in CrI.M.P.No.29720 of 2014 dated 12.11.2014 and insofar as the

second case is concerned, the bail is granted to the concerned accused, who did not have any antecedents and however in the case on hand, the detenu is having antecedents in the form of 302 IPC and as such, in both cases, there is a likelihood of the detenu in coming out on bail and indulging in activities which are prejudicial to the public order and peace is involved and therefore, the subjective satisfaction derived by the Detaining Authority is vitiated and hence the impugned order of detention warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in No.1101/BCDFGISSSV/2018 dated 01.12.2018 is set aside and the detenu namely, Sasi @ Black Berry, son of Chandran, aged about 22 years, who is confined at Central Prison, Puzhal, Chennai 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]
15.04.2019

Internet : Yes/No
Index : Yes/No

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To

1. The Secretary to Government

Department of Prohibition and Excise (home)
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai-600 007.

3.The Public Prosecutor
High Court, Madras.



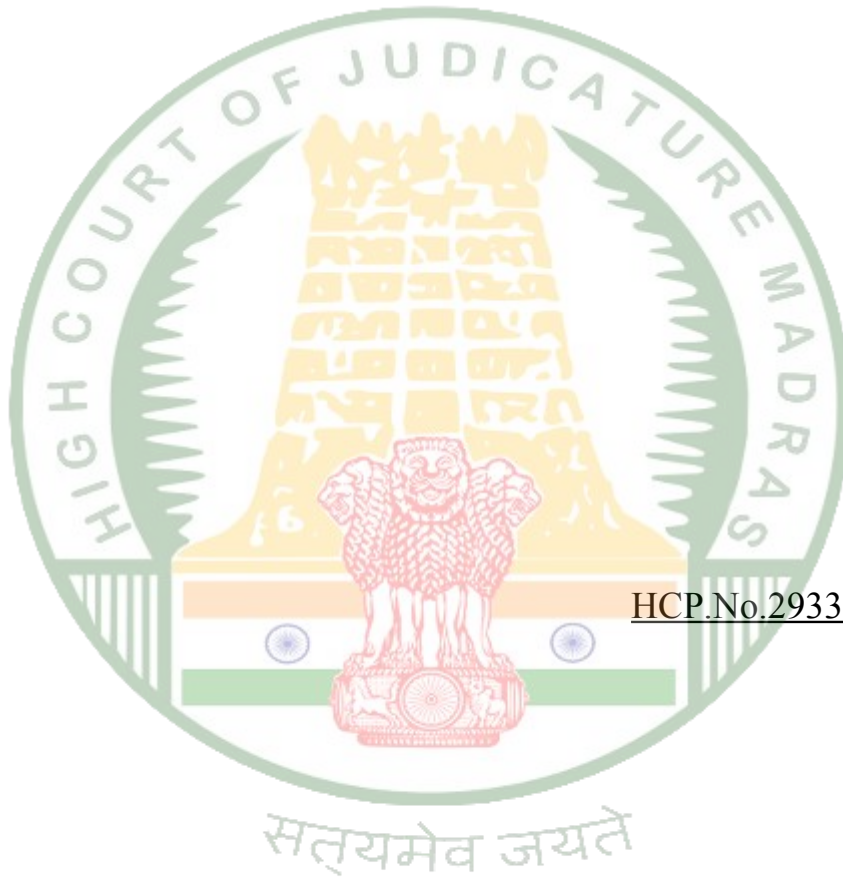
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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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