

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.2938/2018

M.Jothi .. Petitioner/Friend of the detenue
vs.

- 1.The State of Tamilnadu,
Rep. By its Secretary to the Government,
Prohibition and Excise Department, (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 1088/BCDFGIISSSV/2018 dated 28.11.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenue Ramachandran, son of Mariyappan, aged about 34 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner .. Mr.Ilayaraja Kandasamy
For Respondents.. Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

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

The petitioner is the friend of the detenu, viz., Ramachandran, son of Mariyappan, aged about 34 years, herein, and challenging the legality of the impugned order of detention dated 28.11.2018 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 14/1982), came forward to file the present habeas corpus petition.

2 As per the Grounds of Detention dated 28.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases and in all the cases, he has been arrested and incarcerated:-

i) Adverse cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	S-8 Adambakkam Police Station Cr.No.580/2018	457, 380 IPC
2	S-8 Adambakkam Police Station Cr.No.583/2018	380 IPC
3	S-7 Madipakkam Police Station Cr.No.514/2018	457, 380 IPC
4	S-8 Adambakkam Police Station Cr.No.675/2018	379 IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Surya son of Sambakumar, a resident of Alandur, Chennai-88 is running a Briyani shop and at about 5.30 hours on 07.11.2018, when he was proceeding by walk and was nearing Sunshine School, Adambakkam, two persons who were standing there, wrongfully restrained the complainant and threatened him to hand over the articles found in his pocket and when the complainant questioned the same, he was assaulted and asked to part away with the money and once again, the complainant questioned the same and the accused threatened him by disclosing their identities and when he resisted, they took out a knife and when the complainant tried to move away, he was kicked and as a result, he fell down and thereafter, one of the accused took away a cash of Rs.1500/- and a cell phone from his pocket and also threatened him to finish him off and when he raised alarm, public gathered and they were also threatened with dire consequences and taking advantage of the situation, he fled away from the scene of crime. The Inspector of Police attached to S8 Aambakkam Police Station, on receipt of the complaint from the defacto complainant, has registered a case in crime No.713/2018 for the commission of the offences u/s.341, 294[b], 323, 336, 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 on 09.11.2018 at about 10.00 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, Alandur, on 09.11.2018 and was ordered to be remanded to judicial custody till 20.11.2018 and his remand period was further extended till 04.12.2018. 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 page No.255 of the Booklet which is the order of remand passed in the ground case as well as the vernacular version, which is available at page No.257 and would submit that as per the original English version of the order, the accused was produced on 09.11.2018 at about 9.45 p.m. in the residence of the learned Magistrate and whereas, in the vernacular version, it is stated that the detenu/accused was produced at 8.05 p.m. on 09.11.2018 in the Court. Since it is a vital discrepancy or an error crept in the said translation, the Detaining Authority at least ought to have sought for a clarification from the Sponsoring Authority as to the said mistake and the same would also exhibit non application of mind on the part of the Detaining Authority to the relied upon document and hence, prays for quashment of the impugned order of detention.

5 Per contra, the learned Additional Public Prosecutor would submit that with regard to the alleged improper translation, no complaint whatsoever, in the form of representation has been submitted by the petitioner and as such, he is precluded from raising the said point at this point of time and prays for dismissal of the petition.

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

7 As rightly pointed out by the learned counsel for the petitioner, in the vernacular version of the translation of the order of remand in the ground case dated 09.11.2018, there is a vital discrepancy and though the detenu was produced in the residence of the Magistrate concerned at 9.45 p.m. on 09.11.2018, it has been wrongly translated as if he was produced in the open Court at about 8.05 p.m. on 09.11.2018. In the light of the vital discrepancy and mistake, the Detaining Authority at least ought to have sought for a clarification from the Sponsoring Authority and that apart, the error had crept in, in a relied upon document and admittedly, it has not been done so. Hence, on this sole ground, the impugned Order of Detention is vitiated and the same 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

28.11.2018 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai-600 007.
- 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 St George,
Chennai-9.

सत्यमेव जयते

H.C.P.No.2938/2018

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