

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2958 of 2018

Poongavanam

.. Petitioner

Versus

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

2.The Commissioner of Police,
Greater Chennai
Office of the Commissioner of Police (Goondas Section)
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 connected with the detention order of the second respondent in BCDFGISSSV No.741/2018 dated 22.08.2018 and quash the same and direct the respondents to produce the body and person of the petitioner's son namely [Raja@Senthamilselvam](#), son of Poongavanam, aged about 25 years detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Mohamed Ansar

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 22.08.2018 passed by the 2nd respondent by invoking Section 2(f) 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 case:

<i>Sl.No.</i>	<i>Crime No.</i>	<i>Section of law</i>	<i>Date of occurrence</i>
1.	J-6 Thiruvanniyur Police Station Cr.No.879/2018	341, 307 IPC	11.07.2018

It is further alleged in the ground of detention that the defacto complainant namely Mr.Anandan, a resident of Thiruvanniyur has lodged a complaint on the file of J-6 Thiruvanniyur Police Station on 12.07.2018 stating among other things that he is running a tiffin shop on the platform in front of Thiruvanniyur Bus depot. At about 07.30 hours on 12.07.2018, while the defacto complainant preparing the tiffin, three persons came to his shop and threatened him by disclosing their identity,

to part with the money and in that process, he was also abused by using unparliamentary words. One of the persons took out a knife and kept it over his neck and other accused slapped him and snatched a sum of Rs.900/-. When the defacto complainant raised an alarm, the public gathered nearby and the detenu took hot sambar and poured and threatened the public with dire consequences and fled away from the scene of occurrence. The Inspector of Police, J-6 Thiruvannamiyur Police Station, upon receipt of the complaint, has registered a case in Cr.No.882/2018 for the commission of offence under Sections 341, 294(b), 323, 427, 397 and 506(ii) IPC. The detenu was arrested at about 12.00 noon on 16.07.2018 and he voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement led to recovery of some incriminating articles. The detenu was produced before the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai-15 on the same day and he was ordered to be remanded to judicial custody till 30.07.2018 and his remand period was further extended till 27.08.2018.

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 on being satisfied that his acts are prejudicial to the maintenance of public order and peace has clamped the impugned order 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 attention of this Court to paragraph no.4 of the grounds of detention and would submit that the detenu is in connection with the ground case as well as in the adverse case and in order to derive the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in activities which are prejudicial to the maintenance of public order and peace, the Detaining Authority has placed reliance upon the order passed in CrI.M.P.No.8608/2018 by the Court of Principal Sessions Judge, Chennai in connection with the Cr.No.324/2018 and drawn the attention of this Court to Page Nos.409 and 411 of the booklet, order granting bail in the said case and would submit that the original English version of the orders is illegible and the vernacular version of the same is available in Page nos. 413 and 415 of the booklet and still it is obligatory on the part of the Detaining

Authority to seek clarification from the Sponsoring Authority as to the illegibility of the original version of the said order. Since clarification has not been sought and that the relied upon document by the Detaining Authority is a illegible one, the detention order passed by him is vitiated and prays for quashment of the impugned order of detention.

5. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the vernacular version of the said order has been furnished to the detenu and hence, he has not been prejudiced on account of the alleged illegibility of the original version of the said order 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. A perusal of Page Nos.409 and 411 of the booklet viz., similar order granting bail in CrI.M.P.No.8608/2018 in connection with Cr.No.324/2018 would disclose that almost the entire order is illegible and the vernacular version of the same has been furnished and it is

available at Page Nos.413 & 415 of the booklet. It is to be pointed out at this juncture that it is supposed to be the translation of the original order and the original version of the same is illegible. It is obligatory on the part of the Detaining Authority to seek clarification from the Sponsoring Authority as to the said illegibility and however, the same has not been done. On account of furnishing of illegible copies, the detenu was prevented from making effective representation, though in the representation dated 17.02.2018, it has been pointed out that no satisfactory disposal has been given by the Detaining Authority and hence, on the sole ground, 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 BCDFGISSSV No.741/2018 dated 22.08.2018, is set aside and the detenu namely, Raja @ Senthamilselvan, son of Poongavanam, aged about 25 years, who is now confined in Central Prison, Puzhal, Chennai is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

23.04.2019

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Internet : Yes/No

Index :Yes/No

To

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Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai-600 007.
- 3.The Public Prosecutor
High Court, Madras.



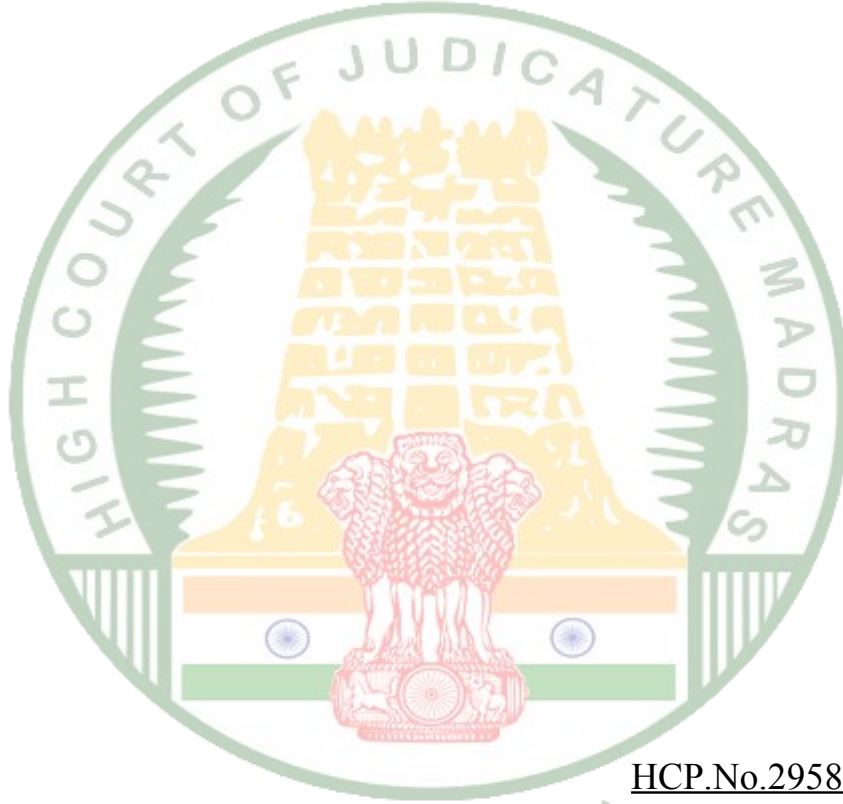
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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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