

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.2934 of 2018

Vanisri

.. Petitioner

Versus

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

2.The District Collector and District Magistrate
Kanchipuram District,
Kancheepuram.

.. 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.97/BCDFGISSSV/2018 dated 05.12.2018 on the file of second respondent herein and set aside the same as illegal and produce the detainee Vicky @ Vignesh, son of Gopinath, aged about 24 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 mother of the detenu, who, vide impugned Order of Detention dated 05.12.2018 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 cases:

<i>Sl.No.</i>	<i>Crime No.</i>	<i>Section of law</i>	<i>Date of occurrence</i>
1.	Chengalpattu Town Police Station Cr.No.95/2017	379 IPC	03.02.2017
2.	Chengalpattu Town Police Station Cr.No.99/2017	379 IPC	03.02.2017

It is further averred in the grounds of detention that the defacto complainant namely Mr.Paramanandam, son of Natesan, a resident of Pazhaveli Village, Chengalpattu Taluk, has lodged a complaint at about 11.00 hours on 24.10.2018. The detenu who belong to the same Village came to his shop and demanded money at knife point and when he tried

to flee away, he was waylaid and slapped on his cheek by the detenu. The defacto complainant was attacked by the detenu by using the blunt portion of the knife and in that process, a cash of Rs.520/- and a red colour Nokia button cellphone possessed by the defacto complainant were taken by the detenu and when he raised an alarm, the public nearby gathered and they were also threatened with dire consequences and taking advantage of the situation, they fled away from the scene of occurrence. The Sub Inspector of Police, Chengalpattu Taluk Police Station, upon receipt of the complaint from the defacto complainant, has registered a case in Cr.No.666 of 2018 for the commission of offences under Sections 294(b), 341, 323, 324, 427, 392, 397, 506(ii) IPC (ground case). The detenu was arrested on 24.10.2018 at about 14.00 hours and he voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized and he was produced before the Court of Judicial Magistrate-II, Chengalpattu on 24.10.2018 and he was ordered to be remanded to judicial custody till 03.11.2018 and the intimation of his arrest was also informed to the mother of the detenu / petitioner herein through mobile phone.

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, has already come to adverse notice in two cases and his acts are prejudicial to the maintenance of public order and accordingly, 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 Page Nos.106 and 107 of the booklet and would submit that in the arrest memo, the arrest of the detenu in connection with the ground case, said to have been sent through Mobile No.9444918872 and neither the contents of the message nor the name of the registered owner of the said mobile phone have been furnished to the detenu. On behalf of the detenu, post detention representation dated 22.01.2019 have also been sent, specifically pointing out that the arrest intimation have not been informed within 24 hours and in the response, they merely stating that the message was sent through mobile phone and however, nothing has been indicated as to the contents of the said message and therefore, 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 arrest intimation was given to the mother of the detenu/petitioner through mobile phone and 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. A perusal and consideration of Page Nos.105 & 107 of the booklet would disclose that in column no.12, the arrest intimation was given to the mother of the detenu/petitioner herein and it has been indicated that SMS (message) has been given to the mobile phone No. 9444918872. Though, this Court can take judicial notice of the fact that the mobile phone is possessed by other than the registered owner, atleast a copy of the text message sent to the relative of the detenu should have been furnished. It is obligatory on the part of the Sponsoring Authority to

furnish particulars to the detenu as to his arrest and incarceration in connection with the ground case to the relatives and admittedly, it has not been done. Since, the constitutional obligation has not been adhered to and complied with and admittedly, the same has not been carried out in a proper manner by the Detaining Authority, 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 No.BDFGISSSV No.97/2018 dated 05.12.2018 is set aside and the detenu namely, Vicky @ Vignesh, son of Gopinath, aged about 24 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.

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[M.S.N., J] [M.N.K., J]
23.04.2019

Internet : Yes/No
Index : Yes/No
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To

1.The Secretary to Government
Home, Prohibition Excise Department
Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

3.The Public Prosecutor
High Court, Madras.



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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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