

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.2952 of 2018

Chinnannan

.. Petitioner

Versus

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

2.The Commissioner of Police,
Salem City, Salem District.

.. 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 detention order in Cr.M.P.NO.81/Goonda/Salem City/2018 dated 28.11.2018 on the file of the 2nd respondents herein to produce the body of his son Rajkumar S/o.Chinnannan, Male, aged about 23 years, the detenu now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.K.T.S.Sivakumar

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 28.11.2018 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.	Salem town PS 294(b), 323, 324, 506(ii) Cr.No.260/2016	IPC	07.07.2016
2.	Azhagapuram PS 302 IPC @ into 147, 148, Cr.No.219/2018	302 IPC	14.06.2018

It is further alleged in the grounds of detention that one Mr.Marudhachalam, Son of Subramani, a resident of Azhagapuram, Salem District / defacto complainant appeared before the Sub Inspector of Police of the Azhagapuram Police Station at about 08.30 hours on 03.11.2018 and lodged a complaint stating among other things that at about 07.20 hours on the same days, he was proceeding in front of

H.D.F.C Bank located on Brindavan Road and four persons in the

opposite direction waylaid him and one of them identified the other two persons and also disclosed the identity of one Ulaganathan, who snatched the cellphone from his pocket and also instructed the detenu namely Rajkumar to take out the money from the pocket of the defacto complainant and accordingly, he took cash of Rs.1,450/- and also a mobile phone and when the defacto complainant raised an alarm, public gathered and they were also threatened with dire consequences and taking advantage of the situation, all the four accused including the detenu fled away from the scene of occurrence. The Sub Inspector of Police of the above said Police Station, based on the complaint, registered a case in Cr.No.422/2018 for the commission of offences under Sections 341, 392 r/w 397 and 506(ii) IPC and all the accused including the detenu were arrested on 03.11.2018 at 13.15 hours and they voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement, some incriminating articles were seized. All the accused including the detenu were produced before the Court of Judicial Magistrate No.5, Salem on 03.11.2018 and they were ordered to be remanded to judicial custody till 16.11.2018 and their remand period was further extended till 30.11.2018.

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, has already come to adverse notice in two cases 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.3 of the grounds of detention and would submit that nothing has been indicated as to the information given to the relative of the detenu as to the arrest of the detenu in connection with the ground case and further invited attention of this Court to page no.180 of the booklet and would submit that SMS was said to have been given to the uncle of the detenu through cell phone no.9942190850 and registered owner of the mobile number has not been given, so also a copy of the text message. Since it is a constitutional obligation cast upon the Sponsoring Authority, the said authority have failed to adhere to the same 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 arrest intimation was given to the uncle of the detenu through mobile phone by way of message and as such all the formalities have been complied with 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 the grounds of detention would disclose that there is no specific averment as to the arrest intimation of the detenu in connection with the ground case given to the uncle of the detenu. In page nos.180 and 181 of the booklet, arrest intimation form is available and in column no.12, it is indicated that the arrest intimation is given to the uncle of the detenu, however the copy of the text message has not been furnished. This Court can take judicial notice of the fact that it is not necessary that the registered owners alone can possess the mobile number, some other persons may use the mobile number registered in the name of the others. It is obligatory on the part of the Sponsoring Authority atleast to furnish copy of the message given to the uncle,

however copy of the text message has not been given to the detenu and as such, the obligation cast upon the Sponsoring Authority has not been complied with and the Detaining Authority has failed to advert to the said material fact 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 Cr.M.P.NO.81/Goonda/Salem City/2018 dated 28.11.2018 is set aside and the detenu namely, Rajkumar S/o.Chinnannan, Male, aged about 23 years, who is now confined in Central Prison, Salem 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]
23.04.2019

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Internet : Yes/No
Index : Yes/No

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To

1.The Secretary,
Home, Prohibition Excise (XVI)Department
Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Salem City, Salem District.

3.The Public Prosecutor
High Court, Madras.



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AND

M.NIRMAL KUMAR, J.,
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