

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2983 of 2018

Velankanni

.. Petitioner

Versus

1.State of Tamil Nadu
rep.by The Secretary to Government
Home, Prohibition Excise Department
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 BCDFGISSSV No.1102/2018 dated 03.12.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Rajesh @ Kannagi nagar Rajes, son of Anbu, aged about 29 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.M.Prabaharan

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 and also co-accused in the second adverse case registered in J-6 Thiruvanmiyur Police Station in Cr.No.1546/2018, who, vide impugned Order of Detention dated 03.12.2018 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:

Sl.No.	Crime No.	Section of law	Date of occurrence
1.	J-11 Kannagi Nagar P.S.Cr.No.551/2018	341, 294(b), 336, 392, 397, 506(ii) IPC	23.07.2018
2.	J-6 Thiruvannmiyur Police Station Cr.No.1546/2018	147, 148, 307 IPC	25.10.2018

It is further averred in the grounds of detention that the defacto complainant namely Mr.Vinothkumar, son of Ganesan, a resident of Thiruvannmiyur, Chennai-41 has lodged a complaint on 26.10.2018 stating among other things that while he was looking after the business in the shop, 6 to 9 persons went to the complainant's shop and demanded tender coconut and when the complainant told them that each of the tender coconut cost Rs.25/-, they asked him to give at free of cost and when it was replied in negative by the complainant, he was threatened with dire consequences and he got frightened and fearing for his life, part with them money of Rs.300/- and when he raised an alarm, public nearby gathered and they are also threatened with dire consequences and taking advantage of the situation, fled away from the scene of occurrence. The Sub Inspector of Police, Thiruvannmiyur Police Station has registered a case in Cr.No.1548/2018 under Section 294(b), 386 and 506(ii) and took up the investigation. The detenu was arrested on 07.11.2018 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. The detenu has also accepted his involvement in the two adverse cases. The detenu was produced before the Court of XVIII Metropolitan Magistrate Court and he was ordered to be remanded to judicial custody till 20.11.2018 and further his remand period was 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, 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 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 attention of this Court to Paragraph No.4 of the grounds of detention and would submit that as per the contents of the said paragraph, the detenu is in custody in connection with the two adverse cases and ground case and in order to derive the subjective satisfaction that in the event of enlarging on bail in both cases, the detenu likely to indulge in activities which are prejudicial to the maintenance of public order, has relied upon two orders passed in CrI.M.P.No.20272 of 2018, concerned in J-6 Thiruvanniyur Police Station in Cr.No.1546/2018 and CrI.M.P.No.2768 of 2015 concerned in J-1 Saidapet Police Station in Cr.No.2303 of 2015 and the said orders are available in Page Nos.225, 227, 277 and 279 of the booklet respectively and admittedly, in the said cases, the detenu did not have any bad antecedents in any one of the cases and the learned Public Prosecutor has also not expressed any serious objection in enlarging the concerned petitioner on bail. Admittedly, in the case on hand, the detenu is having two adverse cases of serious offences and as such, there was no real and imminent possibility of the detenu to get order of bail in the said cases and as such, the subjective satisfaction derived by the Detaining Authority 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 appearing for the petitioner, a perusal and consideration of the similar orders relied upon by the Detaining Authority would disclose that the concerned petitioners did not have any bad antecedents and therefore, they were enlarged on bail, but in the case on hand, the detenu involved himself in commission of heinous offences and therefore, there would not be any real and imminent possibility of him coming out on bail so as to indulge in activities which are prejudicial to the maintenance of public order and peace. Therefore, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated. 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.1102/2018 dated 03.12.2018 is set aside and the

detenu namely, Rajesh @ Kannagi Nagar Rajesh, son of Anbu, aged about 29 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition Excise Department
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Police,
Chennai City Police, Greater Chennai,
Commissioner Office, Vepery,
Chennai-600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary,
Public(Law & Order), Fort St.George, Chennai.
- 5.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

HCP.No.2983 of 2018

CSL/26.06.2019

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