

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.2991/2018

Sneha

..

Petitioner

vs.

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

2.The Commissioner of Police,
Greater Chennai

..

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus, calling for the records in connection with the order of detention passed by the second respondent dated 01.12.2018 in Memo No.1100/BCDFGISSSV/2018 against the petitioner husband Balachandar @ Bala, male aged 30 years S/o.Kesavan, who is confined at Central Prison, Puzhal II, chennai and set aside the same and direct the respondents to produce the detenue before the Court and set him at liberty.

For Petitioner ..

Mr.S.Senthil Vel

For Respondents ..

Mr.C.Iyyappa Raj, APP

ORDER

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

The petitioner is the wife of the detenu, viz., Thiru.Balachandar @ Bala, son of Kesavan, aged about 30 years, herein, and challenging the legality of the impugned order of detention dated 01.12.2018 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 01.12.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i)Adverse cases:

<i>Sl No</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	T-1 Ambattur Police Station Cr.No.2180/2018	341, 294 (b), 323, 307 IPC @ 341, 294(b), 323, 307, 302 IPC

3 It is further averred in the Grounds of Detention that the

defacto complainant, viz., Vinothkumar, son of Stalin, a resident of Ambattur, Chennai-53, on 07.11.2018 at about 08.00 hours was proceeding by walk near Murugan Temple, three persons wrongfully restrained him and demanded to part with the money and when the complainant replied in negative, one of them, took out a knife and abused him in filthy language and also disclosed his identity and his antecedents and asked his associates to take the money and accordingly, one of them, viz., Sathish @ Sakthi, snatched a sum of Rs.600/- from the shirt pocket and another accused by name Sasi @ Black Berry took the cellphone of the complainant from the pant pocket and when he raised an alarm, public gathered and they were also threatened with dire consequences and taking advantage of the situation, the accused fled away from the scene of crime. The Inspector of Police attached to T1 Ambattur Police Station has registered a case in crime No.2181/2018 for the commission of the offences u/s.341, 294[b], 336, 427, 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 07.11.2018 at about 12.00 noon 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, Ambattur, Chennai on the same day 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 paragraph No.4 of the Grounds of Detention and would submit that the Detaining Authority in order to derive the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulge in activities which are prejudicial to the maintenance of public peace and order, has placed reliance upon the arrest and incarceration of the detenu in connection with the adverse case as well as in the ground case and two similar orders passed in CrI.MP.No.17385/2014 concerned in F1 Chindadripet Police Station Crime No.809/2014 and in CrI.MP.No.3177/2018 concerned in

M4 Redhills Police Station Crime No.369/2018 and the said case cannot be cited as similar cases for the reason in the first case, the co-accused was granted bail by this Court and in the 2nd adverse case, the accused was not visited with any adverse case or having bad antecedents and as such, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and therefore, prays for quashment of the impugned order of detention.

5 *Per contra*, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind and on thorough consideration of the materials placed, has rightly derived the subjective satisfaction and has clamped the order of detention and prays for dismissal of this 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, the similar cases cited by the Detaining Authority cannot be construed as similar cases for the reason that in the first case, the co-

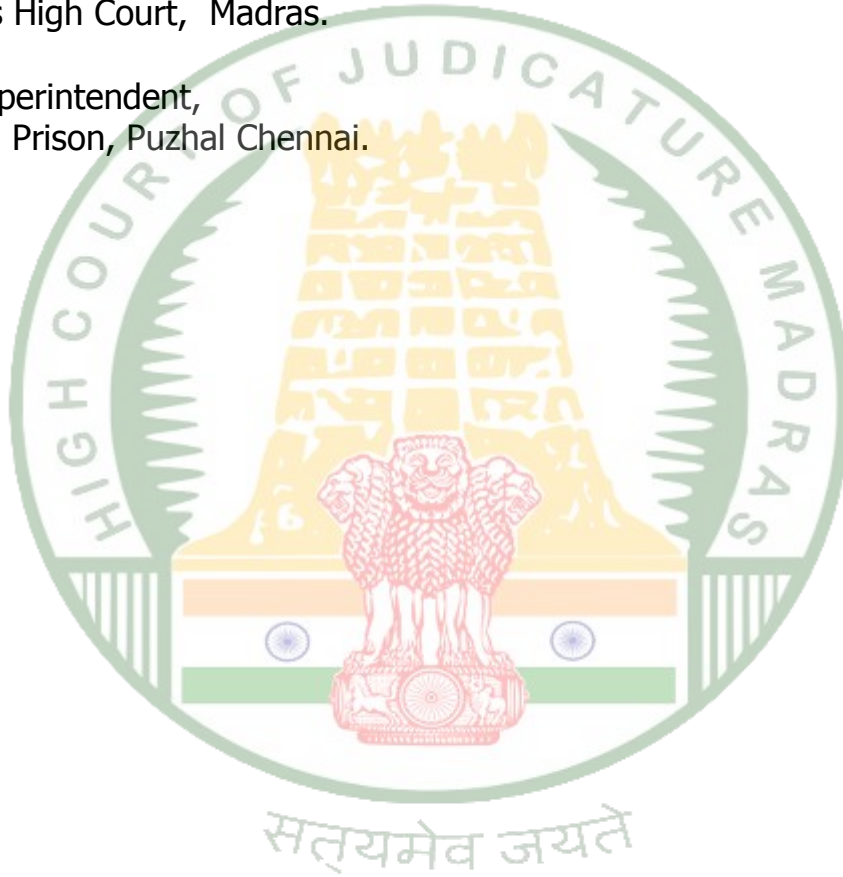
accused was granted bail by this Court and that waived in the mind of the concerned Court to grant bail and insofar as the 2nd case is concerned, the petitioner therein was not having any antecedents and in the case on hand, the detenu is already having antecedents in the form of adverse cases involving commission of heinous offence punishable u/s.302 IPC and as such, 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, is wholly vitiated and hence, on this sole ground, the detention order, impugned herein, 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 01.12.2018 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.

[M.S.N, J.] [M.N.K., J.]
29.04.2019

Internet : Yes
AP
To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police,
Greater Chennai .
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent,
Central Prison, Puzhal Chennai.



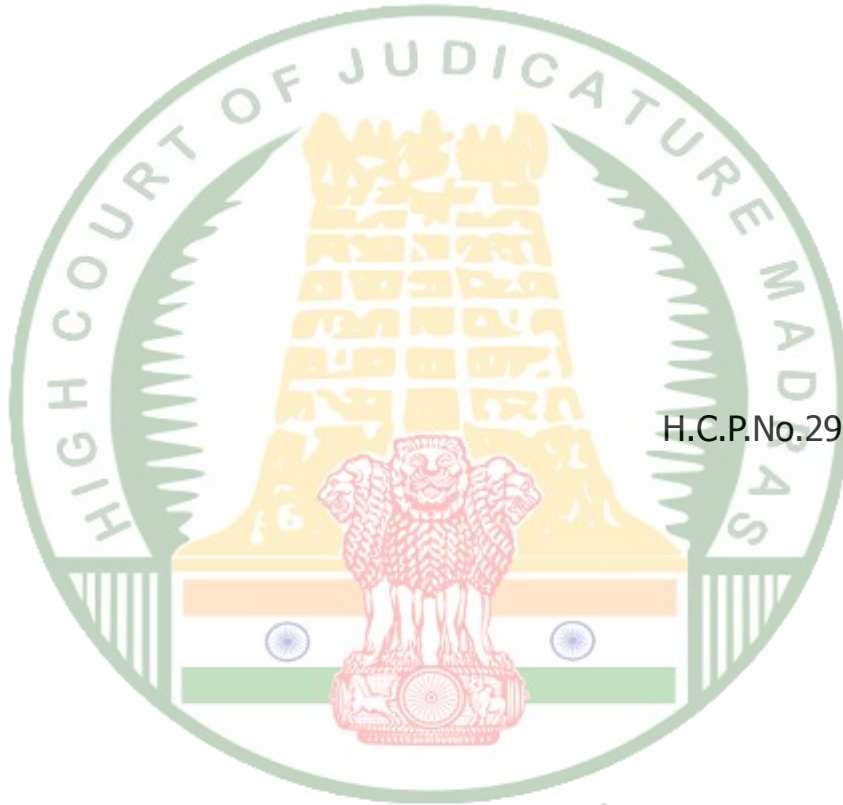
WEB COPY

M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

AP



H.C.P.No.2991/2018

सत्यमेव जयते

WEB COPY 29.04.2019