

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.2981/2018

Sowndarya

..

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, to call for the records in No.1067/BCDFGISSSV/2018 dated 23.11.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Vikky @ Vignesh, son of Raja, aged about 24 years, who is confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner

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Mr.Ilayaraja Kandasamy

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.Vikky @

<http://www.judis.nic.in> Vignesh , son of Raja, aged about 24 years, herein, and challenging the

legality of the impugned order of detention dated 23.11.2018 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 23.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following case:-

i)Adverse cases:

Sl No .	Name of the Police station and Crime No.	Section of law
1	J-6Thiruvanmiyur Police Station Cr.No.1546/2018	147, 148, 307 IPC

3 It is further averred in the Grounds of Detention that one Vinothkumar, son of Ganesan, a resident of Periyar Nagar, Tiruvanmiyur, Chennai-41, who is running a coconut shop, has lodged a complaint on the file of the Sub Inspector of Police, J6 Thiruvanmiyur Police Station,

stating among other things that at about 7.30 hours on 26.10.2018, he

was looking after the business in the said shop and at that juncture, six persons barged into the shop and demanded coconuts and when the complainant asked to pay the money, they threatened him with dire consequences and also disclosed their identities and two of them brandished knives and kept on the stomach and in the process, had taken away a sum of Rs.300/- from him and when he raised alarm, public gathered and they were also threatened with dire consequences and in that process, they escaped from the scene of crime. The Sub Inspector of Police, on the basis of the complaint from the complainant, registered a case in crime No.1548/2018 for the commission of the offences u/s.294[b], 386 and 506[ii] IPC **[ground case]** and took up the case for investigation. The Investigating officer effected the arrest of the detenu on 26.10.2018 at about 18.00 hours and the detenu voluntarily came forward to give the confession statement and the admissible portion of the same led to the recovery of the incriminating articles and subsequently, he was produced before the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai on 26.10.2018 and was ordered to be remanded to judicial custody till 09.11.2018 and his remand period was extended till 23.11.2018. 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 peace and order 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 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 adverse case 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.9467/2017, concerned in P3 Vyasarpadi Police Station in Cr.No.828/2017 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 accused therein did not have any bad antecedents and in one of the cases, 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 one adverse case 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. It is further submitted that the detention order in respect of the co-detenu was quashed by this Court in HCP.No.2983/2018 vide order dated 23.04.2019.

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. It is also brought to the knowledge of this Court that the detention order of the co-detenu, viz., Rajesh @ Kannagi Nagar Rajesh, son of Anbu, has been quashed by this Court in HCP No.2983/2018 dated 23.04.2019.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 23.11.2018 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.

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[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.



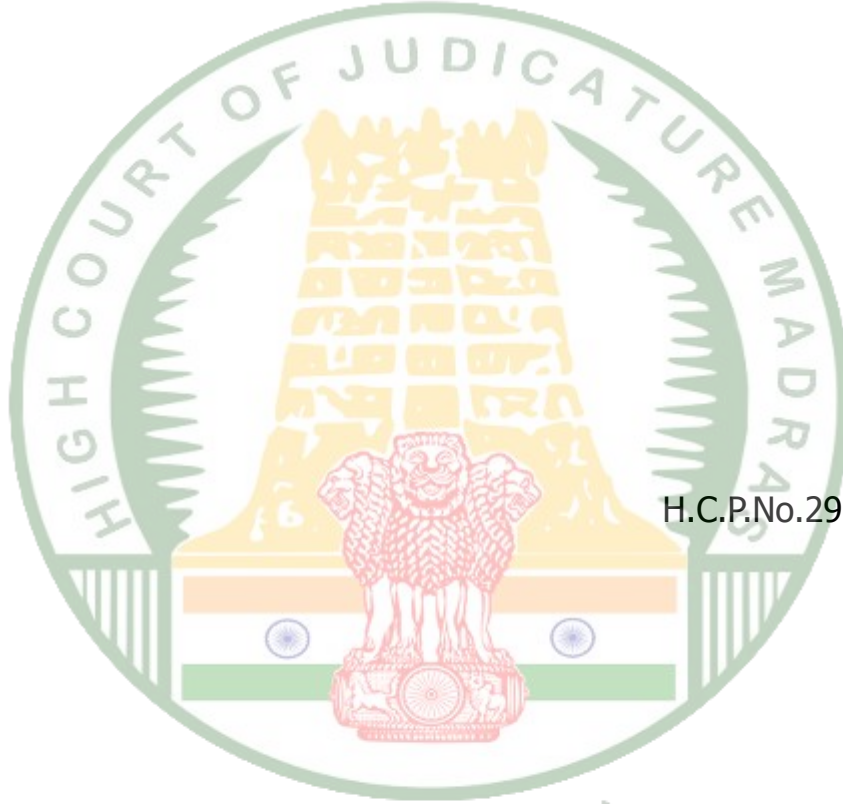
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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

AP



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