

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.2990/2018

Shanthi

.. 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 30.10.2018 in Memo No.1008/BCDFGISSSV/2018 against the petitioner son Prakash, male aged 26 years S/o Raja who is confined at Central Prison, Puzal 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.Iyyapparaj, APP

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

The petitioner is the mother of the detenu, viz., Thiru.Prakash, son of Raja, aged about 26 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 30.10.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases and he is arrested and incarcerated in connection with the adverse cases 2 and 3:-

i)Adverse cases:

<i>Sl No</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	M1 Madhavaram Police Station Cr.No.505/2018	399 IPC
2	M1 Madhavaram Police Station Cr.No.557/2018	147, 148, 294(b),324,307 & 506(ii) IPC
3	M1 Madhavaram Police Station Cr.No.558/2018	341, 294 (b), 395 & 506(ii) IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Yuvaraja, son of Nellaiyappa Pillai, is a resident of Thenkasi, is said to have rented a house at Madhavaram and was working in a Tarpaulin shop near Madhavaram Roundtana and on 24.09.2018 at about 08.00 hours, when he was proceeding to his shop and nearing Madhavaram Roundtana, two persons came in an auto bearing Regn.No.TN-01-Z-8319 and got down from the auto and wrongfully restrained the complainant and by brandishing a knife, asked him to part with the money kept in his pocket and one of them disclosed his identity and asked his associate to hold the hands of the complainant and accordingly, both the hands of the complainant were caught hold and by brandishing the knife, a sum of Rs.3500/- was taken from his shirt pocket and when hhe raised alarm, public gathered and they were also threatened with dire consequences and taking advantage of the situation, the detenu and other accused fled away from the scene of crime. The Inspector of Police attached to M1 Madhaavaram Police Station has registered a case in crime No.559/2018 for the commission of the offences u/s.341, 249[b], 336, 427, 392 r/w 397 and 506[ii] IPC [**ground case**] and took up the case of investigation. The Inspector of Police effected the arrest of the detenu

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, Thiruvotriyur, on the same day and was ordered to be remanded to judicial custody till 08.10.2018. 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 detenu is in custody in connection with the 2nd and 3rd adverse cases and in the ground case and 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 order granting bail in CrI.MP.No.3177/2018 concerned in M4,

Redhills Police Station Cr.No.369/2018 and would submit that insofar as the 2nd adverse case is concerned, the detenu is said to have committed the offence punishable u/s.307 IPC and in respect of the 3rd adverse case, he is said to have committed the offence punishable u/s.395 IPC, for which, no similar case particulars are available and as such, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and hence, 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. सत्यमेव जयते

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 case particulars have been given only in respect of

the ground case and that too, in the considered opinion of the Court, it cannot be construed as a similar case and that apart, insofar as the 2nd and 3rd adverse cases are concerned, the similar case particulars are not available and in the absence of the same, the subjective satisfaction derived by the Detaining Authority 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, is wholly vitiated and hence, on the sole ground, the impugned Order of Detention warrants interference.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 30.10.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Puzhal, Chennai-66 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.



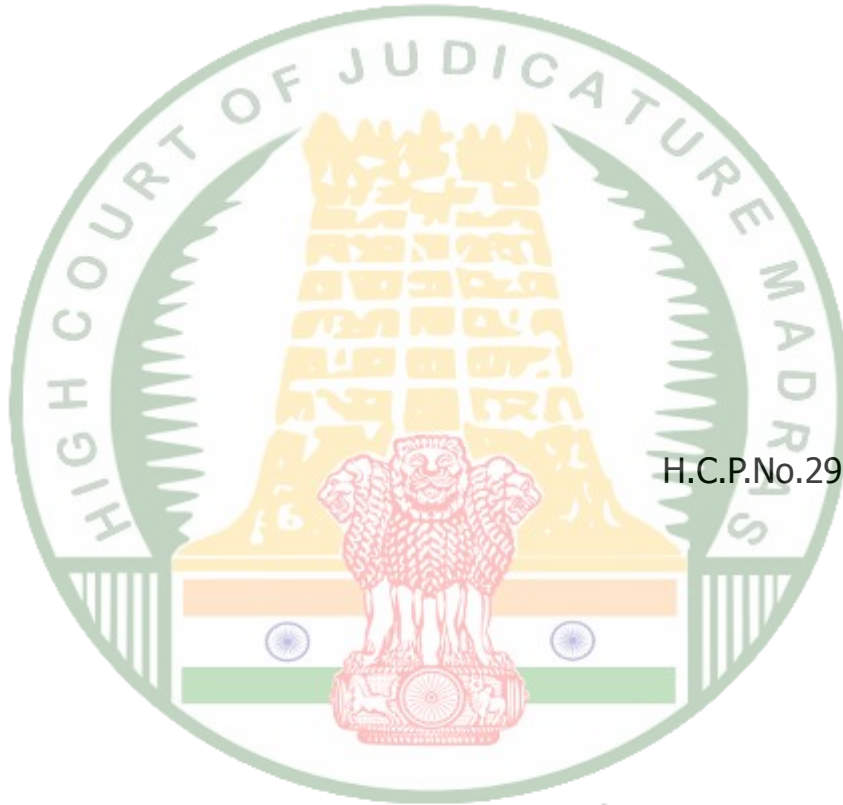
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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

AP



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