

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.2998/2018

Tmt.Saali

..

Petitioner

vs.

1.The State of Tamil Nadu,
rep. By its Secretary to Government, Home,
Prohibition and Excise [XVI] Department,
Fort St.George, Secretariat, Chennai-600 009.

2.The District Collector and
District Magistrate of Krishnagiri,
Krishnagiri District.

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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 02.12.2018 in his office Ref.S.C.No.61/2018 against the petitioner's son by name Thiru. Muthukumar @ Muthu, S/o Settu, aged about 23 years, now confined at Central Prison, Salem, Salem District and set aside the same and direct the respondents to produce the above said detenu before this court and set him at liberty.

For Petitioner .. Mr.V.Parthiban
for M/s.E.Kannadasan

For Respondents.. Mr.C.Iyyappa Raj, APP

ORDER

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

The petitioner is the mother of the detenu, viz., Thiru. Muthukumar @ Muthu, S/o Settu, aged about 23 years, herein, and challenging the legality of the impugned order of detention dated 02.12.2018 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 02.12.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases and he is remanded and incarcerated in all the adverse cases:-

i) Adverse cases:

Sl No .	Name of the Police station and Crime No.	Section of law
1	Kaveripattinam Police Station Crime No.487/2018	454,380 IPC
2	Krishnagiri Taluk Police Station Crime No.585/2018	454, 380 IPC
3	Kaveripattinam Police Station, Crime No.735/2018	454, 380 IPC
4	Kaveripattinam Police Station Crime No.748/2018	454, 380 IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Selvam son of Palani, a resident of Malaipaiyur village, Paiyur Post, Kaveripattinam, Krishnagiri District and along with his family, doing brick klin manufacturing and at about 5.00 p.m, on 26.10.2018, when he was having tea along with one Suresh, a person, later identified as the detenu, approached him and demanded a sum of Rs.100/- and when the complainant questioned the same, the detenu brandished a knife and also disclosed his identity and in the process, had taken away a sum of Rs.2300/- from the pocket. The complainant along with his family raised an alarm and the public nearby, gathered and they were also threatened with dire consequences and taking advantage of the situation, he fled away from the scene of crime. The Inspector of Police attached to Kaveripattinam Police Station has registered a case in crime No.768/2018 for the commission of the offences u/s.392 read with 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 27.10.2018 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, No.1, Krishnagiri, on the same day and was ordered to be remanded to judicial custody till 09.11.2018 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 admittedly, the detenu is incarcerated in connection with all the adverse cases as well as in the ground case and the Detaining Authority, in order to derive the subjective satisfaction, a 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 order and peace, has placed reliance upon the statement of the Sponsoring Authority to the effect that the relatives of the detenu are taking steps to file bail applications ; but neither the said statements of the relatives is made available nor the Special Report of the Sponsoring Authority and in the absence of the same, 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 A perusal and consideration of the Booklet supplied to the detenu along with the impugned order of detention as well as the Grounds of detention would disclose that neither the statements of the relatives nor the Special Report of the Sponsoring Authority as to the relatives taking steps to get bail for the detenu in the said cases, have been furnished 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 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

02.12.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Salem, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to Government, State of Tamil Nadu
Home, Prohibition and Excise [XVI] Department
Secretariat, Chennai 600 009.
- 2.The District Collector and
District Magistrate of Krishnagiri,
Krishnagiri District.
- 3.The Superintendent,
Central Prison, Salem.
- 4.The Joint Secretary to Government,
Public (Law & Order)
Fort St.George,
Chennai-9.
- 5.The Public Prosecutor,
Madras High Court, Madras.

H.C.P.No.2998/2018

ssd(co)
nr 03/07/2019

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