

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.3006/2018

Usha

.. Petitioner

VS.

1.The State of Tamil Nadu,
rep. By the Secretary, Home,
Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Police,
The Greater Chennai City,
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 calling for the records relating to the detention order in Memo No.1112/BCDFGISSSV/2018, dated 07.12.2018 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Victor S/o. Susai aged about 32 years the detainee, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Victor S/o.Susai aged about 32 years the detainee herein at liberty.

For Petitioner
For RR1&2

..
..

Mr.S.Raj Kumar
Mr.C.Iyyappa Raj, APP

ORDER

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

The petitioner is the wife of the detenu, Victor, son of Susai aged about 32 years herein, and challenging the legality of the impugned order of detention dated 07.12.2018 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 07.12.2018 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	J11 Kannagi Nagar Police Station Cr.No.1408/2017	8(c), 20(b)(ii)(B) of NDPS Act 1985

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

complainant, viz., Ganesan, son of Palani, a resident of Kannagi Nagar, Chennai-97, at about 06.30 hours on 07.11.2018 was proceeding near Ezhil Nagar 1st Block, to attend his work and at that time, he was wrongfully restrained by the detenu and was asked to part with the money for the purpose of having liquor and when it was refused he brandished a knife and snatched a sum of Rs.300/- from the shirt pocket and when the complainant raised an alarm, public 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 J11 Kannagi Nagar Police Station has registered a case in crime No.968/2018 for the commission of the offences u/s.341, 294[b], 336, 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 12.45 hours 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, Alandur, 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 18.12.2018. 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 the details of the adverse case given in the Booklet as well as to paragraph No.4 of the Grounds of Detention and would submit that admittedly, the detenu is in custody in connection with the sole adverse case and while deriving at 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 peace and order, the Detaining Authority has totally failed to take into consideration the arrest and incarceration of the detenu in the ground case also and in the light of the said material infirmity, the subjective satisfaction derived by the Detaining Authority is wholly 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 detenu is in custody in connection with the ground case also and while deriving at 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, the Detaining Authority in paragraph No.4 of the Grounds of Detention, has totally failed to advert to the said material fact and as such, the subjective satisfaction derived by the Detaining Authority is wholly vitiated in that regard and hence, on this sole ground, the detention order, impugned herein, is liable to be set aside.

M.SATHYANARAYANAN,J .,
AND

M.NIRMAL KUMAR, J.,

AP

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 07.12.2018 is hereby set aside. The detenu who is now confined in the Central Prison, Pushal, 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,
The Greater Chennai City,
Vepery, Chennai-600 007.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent,
Central Prison, Puzhal,
Chennai-600 007.

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