

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.3002/2018

Saranya

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.1059/BCDFGISSSV/2018, dated 20.11.2018 passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioners husband Ramesh Babu @ Nai Ramesh S/o. Edward aged about 34 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Ramesh Babu @ Nai Ramesh S/o Edward aged about 34 years the detenue herein at liberty.

For Petitioner .. Mr.U.Yuvaraj

For Respondents .. Mrs.Sharadha Devi,
GA(Crl.Side)

ORDER

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

The petitioner is the wife of the detenu, viz., Ramesh Babu @ Nai Ramesh S/o. Edward aged about 34 years herein, and challenging the legality of the impugned order of detention dated 20.11.2018 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 20.11.2018 passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases and he in custody in connection with the 4th adverse case:-

i)Adverse cases:

<i>Sl No</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	T1 Ambattur Police Station Cr.No.1554/2017	307 IPC
2	M3 Puzhal Police Station Crime No.2131/2017	241,294(b),384 & 506 (ii) IPC
3	M3 Puzhal Police Station Crime	294 (b), 384 & 506(ii) IPC

	No.358/2018	
4	M3 Puzhal Police Station Crime No.620/2018	294(b), 397 & 506 (ii) IPC

3 It is further averred in the Grounds of Detention that the defacto complainant, viz., Muthukumar, son of Veersuran, a resident of Kalpalayam, Chennai-99, is running an old paper and plastic shop and at about 13.15 hours on 15.10.2018, he was sitting in his shop and at that time, a person came and threatened him and asked who was the owner of the shop and the complainant replied that he is the owner of the shop and the accused asked the complainant to part with money and when the complainant disclosed the detenu his inability to do so, he was wrongfully restrained and the said person disclosed his identity and also tried to insert his hands in his shirt pocket and tried to pull out the money and also pressed his neck and in the process, he took away a sum of Rs.6000/- and when the complainant raised alarm, 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 M3 Puzhal Police Station has registered a case in crime No.653/2018 for the commission of the offences u/s.341, 294[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 on 29.10.2018 at about 10.00

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, Thiruvotriyur, on the same day and was ordered to be remanded to judicial custody till 12.11.2018 and his remand period was further extended till 26.11.2018. 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 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 4th adverse case and he filed an application for bail for the 4th adverse case in CrI.MP.No.5973/2018 and the same was dismissed and admittedly, the detenu did not file any application for bail in the ground

case and the Detaining Authority, while taking into consideration the statement of the petitioner herein recorded u/s.161[3] Cr.P.C., has misinterpreted the same and observed that in both cases, the detenu is taking steps to file another bail application and insofar as filing another bail application in the ground case, the same does not arise at all for the reason that he is yet to file an application for bail in the said case 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 detenu did not file any application for bail in the ground case ; whereas the Detaining Authority has observed that the detenu is taking steps to file another bail in the ground case and however, the above cited statement of the petitioner did not state so. In the considered opinion of the Court, on account of the said infirmity, which is material in nature, 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, derived by the Detaining Authority 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 20.11.2018 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-600 066.



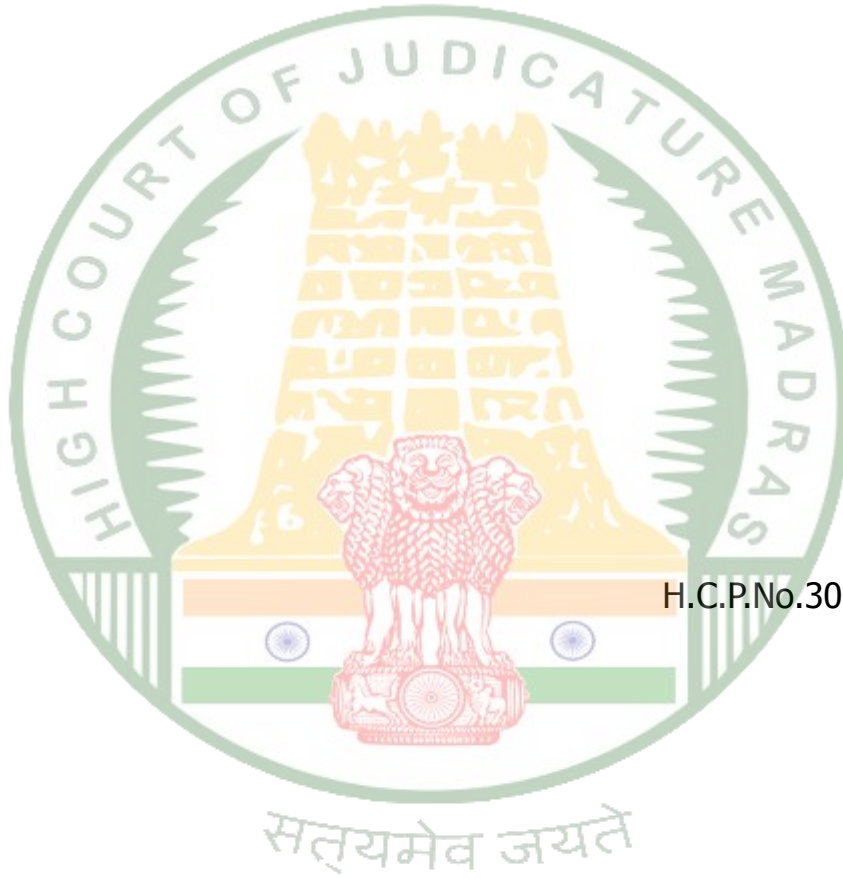
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M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

AP



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