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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.11 of 2019

Johnson Arockiyaraj @ Pandi @ Johnson

... Petitioner

Vs.

1.State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of respondent No.2 in H.S.(M) Confdl. No.34/2018 dated 21.12.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Johnson Arockiyaraj @ Pandi @ Johnson, Son of Chellapandian, aged about 53 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

The detenu himself is the petitioner herein and challenging the impugned order of detention dated 21.12.2018 passed by the second respondent, branding him as a Goonda under the provisions of Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual



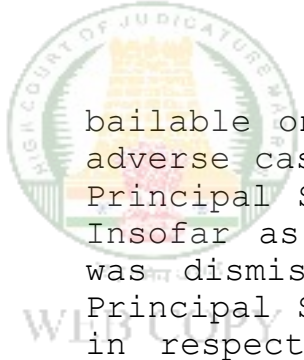
Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), he has filed the present habeas corpus petition.

2. A perusal of the Grounds of Detention dated 21.12.2018, passed by the second respondent herein, the detenu, viz., Johnson Arockiyaraj @ Pandi @ Johnson came to the adverse notice in the following three cases:-

Sl. No.	Name of the Police Station and Crime No.	Sections of Law
1.	SIPCOT Police Station Cr.No.248 of 2017, dated 31.07.2017	147, 148, 342, 302 IPC altered Into 147, 148, 342, 302 r/w 120 (b), 149, 34 IPC
2.	Thoothukudi North Police Station Cr.No.563 of 2017, dated 07.11.2017	294(b), 323 IPC
3.	Thoothukudi North Police Station Cr.No.24 of 2018, dated 10.01.2018	Accidental Fire altered into 4 of TNPPDL Act, 1992

It is further stated in the grounds of detention that on 08.12.2018, at about 09.00 hours, when the defacto complainant, namely, Thoshiba Anand, a resident of Muthukrishnapuram, Thoothukudi District, was proceeding to Poopalrayarpuram market for purchasing vegetables, the detenu has waylaid and abused him with filthy language and asked to part him with money. When the defacto complainant refused and raised an alarm, the detenu took an Aruval and criminally intimidated him. When the persons nearby came to rescue, they were threatened by the detenu with dire consequences by brandishing the Aruval and taking advantage of the situation, the detenu fled away from the scene of occurrence. The Thoothukudi North Police Station, based on the complaint received from the defacto complainant, registered a case in Crime No.490 of 2018 for the commission of offence under Sections 341, 294(b), 387, 307 & 506(ii) IPC (ground case). The detenu was arrested on 08.12.2018 at 14.00 hours and was produced before the Court of Judicial Magistrate No.III, Thoothukudi, on 08.12.2018 and was ordered to be remanded to judicial custody till 21.12.2018. His remand order was extended till 04.01.2019. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the 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 Habeas Corpus Petition is filed.

3. The learned counsel for the petitioner would submit that the detenu is in custody in connection with the ground case alone. Insofar as the second adverse case is concerned, the offence was a



bailable one and he was enlarged on bail. In respect of the third adverse case, he was granted bail in Cr.M.P.No.3760 of 2018, by the Principal Sessions Court, Thoothukudi, vide order dated 12.12.2018. Insofar as the ground case is concerned, his application for bail was dismissed on 17.12.2018, in Cr.M.P.No.3761 of 2018, by the Principal Sessions Court, Thoothukudi and his application for bail, in respect of the ground case, is pending before this Court in CrI.O.P.No.22549 of 2018. The primordial submission made by the learned counsel for the petitioner is that the order granting bail to the detenu in the third adverse case as well as a similar order granting bail to one Mohamad Salim @ Salim in Cr.M.P.No.2239 of 2016, dated 22.08.2016, were passed by the Principal Sessions Court, Thoothukudi, whereas, the bail application of the detenu in respect of the ground case is filed and pending before this Court, which cannot be termed as a similar one. Therefore, the subjective satisfaction derived in this regard is vitiated and hence, prays for quashment of the impugned order of detention.

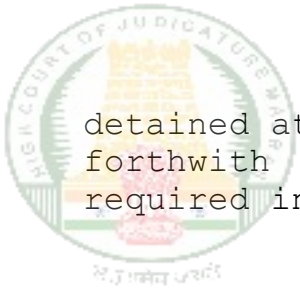
4. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State by drawing the attention of this Court to the averments made in the counter affidavit would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. As rightly pointed out by the learned counsel for the petitioner, though the order granting bail in the third adverse case in Cr.M.P.No.3760 of 2018, dated 12.12.2018 has been relied upon and referred to by the Detaining Authority, a copy of the same has not been furnished to the detenu and therefore, he was prevented from making an effective representation for revoking the impugned order of detention.

7. Insofar as the order granting bail in the similar case is concerned, it was passed by the Principal Sessions Court, Thoothukudi, whereas, the application for bail was filed before this Court and the same is pending. Therefore, the order granting bail by the Subordinate Court cannot be considered as a material fact in respect of the bail application filed and pending consideration before this Court. In the considered opinion of this Court, the above said infirmities would vitiate the impugned order of detention and the same is accordingly, quashed.

8. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, The District Collector and District Magistrate, Thoothukudi District, Thoothukudi, in H.S.(M) Confdl. No.34/2018 dated 21.12.2018. Consequently, the detenu, namely, Johnson Arockiyaraj @ Pandi @ Johnson, aged about 53 years, who is now



detained at Central Prison, Palayamkottai 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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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint secretary to Govt.
Public(Law&Order),
Fort St. George,
Chennai 9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.11 of 2019

07.06.2019

gk/dsk

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