

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 26.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN**AND****THE HONOURABLE MR. JUSTICE B. PUGALENDHI****H.C.P(MD) No. 24 of 2019**

WEB COPY

Kombaiah Thevar

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli - 9.

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the entire records connected with the detention order of the second respondent in M.H.S.Confdl.No.153/2018, dated 27.12.2018 and quash the same and direct the respondents to produce the detenu, by name, Poolpandi, son of Kombaiah Thevar, aged about 24 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

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

The petitioner is the father of the detenu and challenging the legality of the impugned order of detention dated 27.12.2018, passed by the second respondent, under Section 3(1) of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) and branding him as 'Goonda' in M.H.S.Confdl.No.153/2018, came forward



to file the present Habeas Corpus Petition.

2. A perusal of the grounds of detention dated 27.12.2018 would disclose, among other things, that the detenu came to be adverse notice in the following cases:

"(i) Cr.No.333 of 2014 on the file of Palayamkottai Police Station, Tirunelveli City, registered under Sections 379, 294(b), 506(ii) I.P.C., and Sections 21, 36(a) of Mines and Minerals (Development and Regulation) Act, altered into Sections 294(b), 506(ii) and 379 I.P.C.;

(ii) Cr.No.345 of 2017 on the file of Perumalpuram Police Station, Tirunelveli City, registered under Sections 341, 323, 380, 392 and 506 (ii) I.P.C; and

(iii) Cr.No.115 of 2018 on the file of Seevalaperi Police Station, registered under Sections 341, 294(b), 324, 307, 506(ii) I.P.C."

It is further stated in the grounds of detention that the defacto complainant has lodged a complaint on the file of Seevalaperi Police Station stating among other things that on 02.12.2018 at about 19.30 hours, while she was standing in front of her house, she asked the detenu and his associate as to why they disconnected the electricity and the detenu and his associate abused her in filthy language and threatened her by brandishing knife with dire consequences and the defacto complainant raised alarm and based upon the complaint of the defacto complainant, a case in Cr.No.188 of 2018 for the commission of the offences under Sections 294(b), 352, 506(ii) I.P.C., and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002 came to be registered. The detenu was arrested on 03.12.2018 and produced before the learned Judicial Magistrate No.III, Tirunelveli and ordered to be remanded till 31.12.2018.

3. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

4. The learned Counsel appearing for the petitioner has drawn the attention of this Court to paragraph 5 of the grounds of detention and would submit that admittedly, the occurrence took place on 02.12.2018 at about 19.30 hours, whereas in paragraph 5 of the grounds of detention, it is stated that the occurrence took place at a day time in a busy public locality and the said ~~subjective satisfaction~~ to be made on a total non-application of mind and hence, the subjective satisfaction derived on by the detaining authority is vitiated and hence, prays for quashment of the order



of detention.

5. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the detaining authority, on proper application of mind and after taking into consideration all the materials and the report submitted by the sponsoring authority, has rightly clamped the order of detention and the subjective satisfaction arrived at by the detaining authority, in the facts and circumstances of the case, cannot be said to be fatal and hence, prays of dismissal of the Habeas Corpus Petition.

6. This Court has carefully considered the rival submissions and perused the materials placed before this Court.

7. As rightly pointed out by the learned Counsel appearing for the petitioner, the detaining authority found that the detenu committed a grave offence in a busy public locality at a day time and created a feeling of insecurity in the minds of people of that area and thereby, acted in the manner prejudicial to the maintenance of public order, however, the materials placed by the sponsoring authority before the detaining authority would reveal that the occurrence took place at 19.30 hours (07.30 p.m.,) on 02.12.2018 and taking into consideration the fact that since it was a winter time, it cannot be said that the occurrence took place during day time, the subjective satisfaction arrived at by the detaining authority as to the detenu acting in a manner prejudicial to the maintenance of public order, is wholly vitiated and therefore, the impugned order of detention passed by the second respondent warrants interference.

8. In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent, namely, the District Collector and District Magistrate, Tirunelveli District in M.H.S.Confdl.No.153/2018, dated 27.12.2018. Consequently, the detenu, namely, Poolpandi, son of Kombaiah Thevar, aged 24 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.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli - 9.

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

4.The Joint Secretary to Government, Public(Law and Order)
Fort St. George,
Chennai - 9.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

rsb

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