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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.320 of 2019

Amudha Ponnammal

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Trichy.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the records pursuant to the proceedings of the second respondent in Detention Order in Cr.M.P.No.37/Goonda/2018, dated 29.09.2018 and quash the same and consequently, direct the respondents to produce the detenu, namely, Murali, son of Muthirul, aged 22 years, who is now detained in Central Prison, Trichy, before this Court and set him at liberty forthwith.

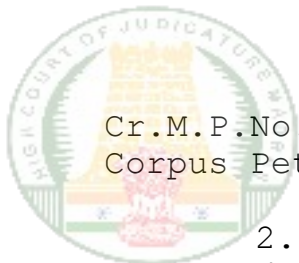
For Petitioner : Mr.K.M.Karunakaran

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

ORDER

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

The petitioner is the mother of the detenu and challenging the legality of the impugned order of detention dated 29.09.2018, 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 Detention Order in



Cr.M.P.No.37/Goonda/2018, came forward to file the present Habeas Corpus Petition.

2. A perusal of the grounds of detention dated 29.09.2018 would disclose, among other things, that the detenu came to be adverse notice in the following cases:

"(i) Cr.No.394 of 2017 on the file of Devakottai Town Police Station registered under Section 392 I.P.C;

(ii) Cr.No.248 of 2017 on the file of Devakottai Taluk Police Station registered under Section 379 I.P.C., altered into Sections 379 and 411 I.P.C; and

(iii) Cr.No.249 of 2017 on the file of Devakottai Taluk Police Station registered under Sections 457 and 380 I.P.C."

It is further stated that on 27.08.2018 at 10.00 hours, on the basis of the complaint lodged by one Govindaraj, son of Perumal, a resident of Konganpatti, Devakottai Taluk, a case in Cr.No.204 of 2018 was registered for the commission of the offences under Sections 389 and 392 I.P.C., and according to the defacto complainant, he was going along with one Venkatesh in a bike and at that time, the detenu and his associate threatened with dire consequences and when he raised alarm, taking advantage of the situation, both of them fled away from the scene of occurrence. The detenu was arrested on 27.08.2018 and produced before the Court of Judicial Magistrate, Devakottai, on 27.08.2018 and ordered to be remanded till 10.09.2018 and the remand period was extended upto 01.10.2018.

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 for the petitioner would submit that in connection with the ground case, the detenu was arrested and arrest intimation was given to his father, namely, Muththirul through SMS through Mobile No.98651 21806 and for having sent arrest intimation to the mother of the detenu through SMS, no material whatsoever has been produced and it is obligatory on the part of the detaining authority to furnish the text of the SMS message and in the absence of the same, the impugned order of detention is vitiated and prays for quashment of the same.

5. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the detaining authority, on proper application of mind, has taken into consideration all the materials and the report submitted by the sponsoring authority and passed the detention order and hence, prays of dismissal of the



Habeas Corpus Petition.

6. This Court has carefully considered the rival submissions on either side and perused the materials placed on records.

7. Perusal of page No.100 of the booklet would disclose that the arrest intimation of the detenu in connection with the ground case was sent to the father of the detenu through SMS through the said mobile number. Admittedly, copy of the said text message alleged to have been sent to the father of the detenu has not been furnished and in the absence of the same, it cannot be stated that arrest intimation was given to the father of the detenu, which is one of the basic principles to be complied with as per the decision of the Honourable Supreme Court in **D.K.Basu Vs. State of West Bengal** reported in **AIR (1997) SC 610**. Hence, on that sole ground, the impugned order is liable to be quashed.

8. In the result, this Habeas Corpus Petition is allowed and the Detention Order in Cr.M.P.No.37/Goonda/2018, dated 29.09.2018 passed by the second respondent, is quashed and the detenu, namely, Murali, son of Muthirul, aged 22 years, now confined at Central Prison, Trichy, is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

rsb

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Trichy.



4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai 9.

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

+1CC TO MR.K.M.KARUNAKARAN, Advocate Sr. No. 68541

H.C.P(MD)No.320 of 2019
12.06.2019

MR(CO)
TR (27.06.2019) 4P 7C