

**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. 38 of 2019**

WEB COPY

S. Veerasekaran

... Petitioner

Vs.

1. State of Tamil Nadu,

represented by

The Principal Secretary to Government,

Home, Prohibition and Excise Department,

Fort St. George,

Chennai.

2. The District Collector and District Magistrate,

Office of the District Collector and District Magistrate,

Nagapattinam District,

Nagapattinam.

3. The Superintendent,

Central Prison,

Tiruchirappalli.

... 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 in detention order passed in C.O.C.No.62/2018, dated 31.12.2018 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's brother, namely, Raja @ Ilayaraja, son of Subramanian, male, aged 28 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

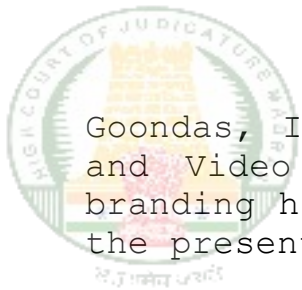
For Petitioner : Mr.K.A.S.Prabhu

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 brother of the detenu and challenging the legality of the impugned order of detention dated 31.12.2018, 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 C.O.C.No.62/2018, came forward to file the present Habeas Corpus Petition.

2. A perusal of the grounds of detention dated 31.12.2018 would disclose, among other things, that the detenu came to be adverse notice in the following cases:

"(i) Cr.No.533 of 2018 on the file of Kilvelur Police Station registered under Sections 341 and 395 I.P.C.; and

(ii) Cr.No.180 of 2018 on the file of Thirukuvalai Police Station registered under Section 386 I.P.C."

It is further stated that the detenu was also involved in the commission of the offence which took place on 18.11.2018 which resulted in registration of the case in Cr.No.330 of 2018 under Sections 147, 148, 341, 294(b), 324, 307 I.P.C., and Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The detenu had surrendered before the learned Judicial Magistrate No.1, Nagapattinam, on 07.12.2018 and ordered to be remanded to judicial custody and subsequently, police custody was taken and in connection with adverse cases also, he was formally arrested and remanded to judicial custody.

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 4 of the grounds of detention and would submit that in order to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail and indulging in such activities prejudice to the maintenance of public order, the detaining authority has placed reliance upon the arrest and incarceration of the detenu in the ground case as well as filing of bail application in Cr.M.P.No.6123 of 2018 on the file of the Judicial Magistrate No.II, Nagapattinam in connection with the said case and the primordial submission of the learned Counsel for the petitioner is that though the detenu has been arrested and he has been under judicial custody in connection with the said two cases, he did not file any application for bail and the said vital aspect has been completely overlooked by the detaining authority and therefore, 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 detenu was formally arrested in connection with two adverse cases also after his surrender and arrest in the ground case and admittedly, he has filed a bail application in the ground case which came to be dismissed and while arriving at the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail, the detaining authority has failed to take into consideration the arrest and incarceration in two adverse cases and in the light of the same, the subjective satisfaction arrived at by the detaining authority is 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, Nagapattinam District in C.O.C.No.62/2018, dated 31.12.2018. Consequently, the detenu, namely, Raja @ Ilayaraja, son of Subramanian, aged 28 years, who is now detained at Central Prison, Tiruchirappalli, 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)

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To

1.The Principal Secretary to Government,
State of Tamil Nadu,

<https://hcservices.hcmrtds.gov.in/10services/>
Home, Police, Probation and Excise Department,
Fort St. George,
Chennai.9



2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.

3.The Superintendent,
Central Prison, Tiruchirappalli.

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.

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