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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.64 of 2019

Aravinth

... 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,
Kanniyakumari District,
Nagercoil.

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 passed in P.D.No.01/2019 dated 03.01.2019 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Aravinth, aged about 23 years, S/o.Manikandan, 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 legality of impugned order of detention dated 03.01.2019 passed by the second 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, 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

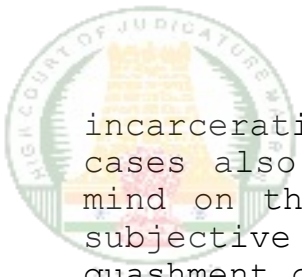
the present habeas corpus petition.

2. A perusal of the Grounds of Detention dated 03.01.2019, passed by the second respondent herein, the detenu, viz., Aravinth came to the adverse notice in the following three cases:-

Sl. No.	Name of the Police Station and Crime No.	Sections of Law
1.	Vellichanthani Police Station, Cr.No.51 of 2018, dated 21.05.2018.	364 and 302 IPC
2.	Suchindrum Police Station, Cr.No.443 of 2018, dated 15.11.2018	379 IPC
3.	Suchindrum Police Station, Cr.No.466 of 2018, dated 01.12.2018	379 IPC

It is further stated in the grounds of detention that based on the complaint given by the *de facto* complainant namely, Vincent, a resident of Palbhanabanputhoor, Vazhukkamparai, Kanyakumari District, Suchindram Police registered a case in Crime No.467 of 2018, for the commission of offence under Sections 341, 294(b), 387, 506(ii) IPC and Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. A perusal of the FIR would disclose that the *de facto* complainant was waylaid by the detenu and he was asked to take out the money kept in his shirt pocket and when he refused to give the money, the detenu took aruval, threatened him and has taken Rs.500/- from his shirt pocket. When the *de facto* complainant, raised an alarm, the persons nearby came to rescue and 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 detenu was arrested on 03.12.2018 at 8.00 hours and was produced before the Court of Judicial Magistrate No.III, Nagercoil, on the same day and was ordered to be remanded to judicial custody till 17.12.2018 and his period of remand was extended till 11.01.2019. 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 has drawn the attention of this Court to paragraph No.4 of the grounds of detention and would submit that the Detaining Authority in order to derive the subjective satisfaction that there is real and imminent possibility of the detenu coming out on bail and indulge in activities, which are prejudicial to the maintenance of public order and placed reliance upon the custody of the detenu in connection with the ground case as well as the dismissal of the bail application and however, has failed to take into consideration the



incarceration of the detenu in connection with 2nd and 3rd adverse cases also and it would not only exhibit the non application of mind on the part of the detaining authority, but also vitiate the subjective satisfaction derived in that regard and hence prays for quashment of the impugned order of detention.

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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, the detaining authority has failed to take into consideration the arrest and incarceration of the detenu in connection with the 2nd and 3rd adverse cases and has taken into consideration of the detenu's custody only in connection with the ground case and the dismissal of the bail application and it would not only exhibit the non application of mind on the part of the detaining authority, but also amounts to non application of mind on the part of the Detaining Authority to the relevant aspect and on account of the same, the subjective satisfaction derived in that regard is vitiated and hence, the impugned order of detention warrants interference.

7.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, Kanniyakumari District, Nagercoil, in P.D.No.01/2019, dated 03.01.2019. Consequently, the detenu, namely, Aravinth, S/o.Manikandan, aged about 23 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 (CO)

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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,
Kanniyakumari District,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Director to Government,
Public (Law and order),
Fort St.George, Chennai 9.

H.C.P(MD)No.64 of 2019
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dsk/gk

KK/SAR/16.07.2019/4P-6C