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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.67 of 2019

Mohmed Sulbi @ Sulbikhar Ali @ Sulbikhan

... 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.02/2019 dated 04.01.2019 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 Mohamed Sulbi @ Sulbikhar Ali @ Sulbikhan, aged about 23 years, S/o.Maheen, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

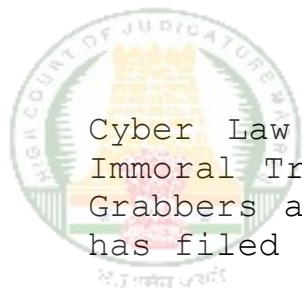
For Respondents

: 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 04.01.2019 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,

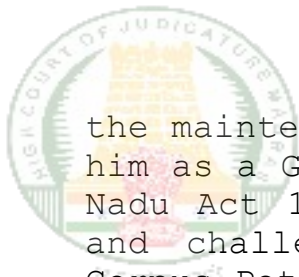


Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), he has filed the present habeas corpus petition.

2.A perusal of the Grounds of Detention dated 04.01.2019, passed by the second respondent herein, the detenu, viz., Mohamed Sulbi @ Sulbikhar Ali @ Sulbikhan came to the adverse notice in the following cases:

Sl. No.	Name of the Police Station and Crime No.	Sections of Law
1	Thiruvattar Police Station, Cr.No.301 of 2018, dated 23.09.2018.	294(b), 324 and 506 (ii) IPC
2.	Thuckalay Police Station, Crime No.397 of 2018, dated 14.12.2018	294(b), 323, 365, 379 (N.P) and 506(i) IPC
3	Thiruvattar Police Station, Crime No.337 of 2018, dated 10.12.2018	147, 341, 294(b), 323 and 506(ii) IPC and Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.
4	Eraniel Police Station, Crime No.582 of 2018, dated 07.12.2018	379 IPC

It is further stated in the grounds of detention that based on a complaint given by the *de facto* complainant namely, Anilkumar, a resident of Anna Nagar Colony, Thiruvithancode, Thuckalay Police has registered a case in Crime No.493 of 2018, for the commission of offence under Section 341, 294(b), 387, and 506(ii) IPC. A perusal of the complaint would, among other things, disclose that the *de facto* complainant was returning after purchasing household articles and at that time, he was waylaid by the detenu and he was abused and asked to remove the gold chain by brandishing Aruval and when it was refused, he was threatened with dire consequences and when he 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 by snatching Rs.245/-. The detenu was arrested on 30.11.2018 at 14.30 hours and was produced before the Court of Judicial Magistrate, Padmanabhapuram, on the same day and was ordered to be remanded to judicial custody till 14.12.2018 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.

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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 though the Detaining Authority has taken into consideration the arrest and incarceration of the detenu in connection with all the cases, both adverse as well as ground case, in order to derive the subjective satisfaction that there is 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, has taken into consideration the order granting bail in similar case in respect of a case registered by Karungal Police in Crime No.475 of 2010 and it pertains to ground case alone and however, has failed to take into consideration, his arrest and incarceration in other adverse cases and hence prays for quashment of the impugned order of detention.

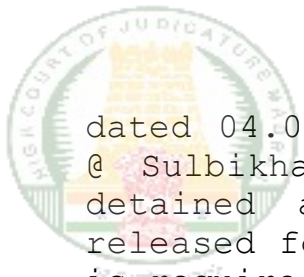
4.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State by drawing the attention of this Court to the averments made in the counter affidavit would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention 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, 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 peace and order, has placed reliance upon a similar order granting bail to the concerned accused, but, it pertains only to the ground case and however, the Detaining Authority has failed to take into consideration of the fact the detenu was also arrested and incarceration in connection with the adverse cases.

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
<https://hcservices.mca.gov.in/hcservices/> the Order of Detention passed by the second respondent herein, namely, The District Collector and District Magistrate, Kanniyakumari District, Nagercoil, in P.D.No.02/2019,



dated 04.01.2019. Consequently, the detenu, namely, Mohamed Sulbi @ Sulbikhar Ali @ Sulbikhan, 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.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

dsk/gk

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 Joint Secretary to Government,
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.67 of 2019

26.06.2019

PBK (18.07.2019) 4P : 6C