



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH Court

DATE : 04.06.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD) NO. 1737 OF 2018

Boopashkannan

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. by the Prl. Secretary to the Government,
Home, Prohibition & Excise Dept.,
Fort St. George,
Chennai 600 009.

2. The District Collector & District Magistrate,
Tirunelveli District,
Tirunelveli.

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

.. Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in M.H.S. Confdl No.137/2018 dated 22.11.2018 and quash the same and direct the respondents to produce the detenu or body of the detenu, viz., Boopashkannan, aged about 26 years, S/o Vellasamy, now detained at Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty.

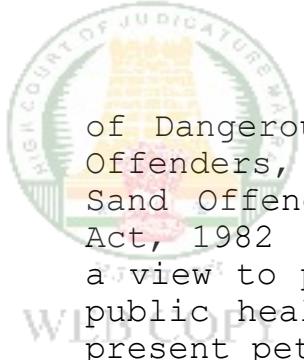
For Petitioner : Mr. N.Prahalathan

For Respondents : Mr. K.Dinesh Babu, APP

ORDER

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

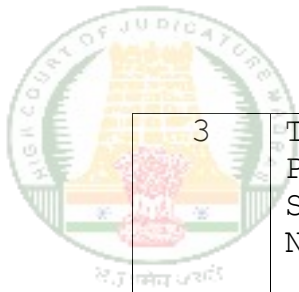
<https://hcservices.ecourts.gov.in/hcservices/>
The detenu himself is the petitioner and challenge is made to the legality of the impugned order of detention dated 22.11.2018 passed by the 2nd respondent u/s 3 (1) of the Tamil Nadu Prevention



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 of 1982) branding him as 'Goonda' with a view to preventing him from acting prejudicial to the interest of public health and public order. Aggrieved by the said order, the present petition has been filed.

2. As per the grounds of detention dated 22.11.18, the detenu came to adverse notice of the following cases :-

S. No.	Police Station & Crime No.	Section of Law	Disposal/Present Stage
1	Thoothukudi District South Police Station, Cr. No.139/2017	294 (b), 307, 506 (ii) IPC	On 20.02.2017 at 15.00 hours, at Thoothukudi - Palayamkottai road near Maiyavadi bus stop, Thiru Boopashkannan and his associates scolded the complainant Velu in filthy language and attempted to murder him by cutting with aruval. The case is under investigation.
2	Thoothukudi District, Pudukottai Police Station Cr. No.153/2018	341, 294 (b), 307, 506 (ii) IPC	On 15.03.2018 at 08.30 hours, near Pudukottai Kadalai shop junction, while the complainant Sivakumar came on motor cycle, Thiru. Boopashkannan and his associate came on motor cycle bearing registration number TN 69 M 3658 and waylaid and scolded the complainant in filthy language and demanded money by threatening him with aruval and attempted to murder him. The case is under investigation.



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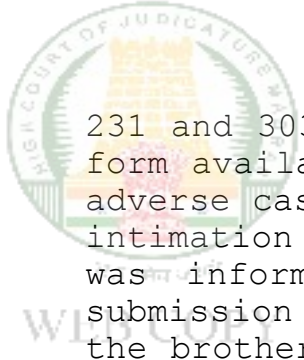
3	Thisayanvilai Police Station Cr. No.319/2018	147, 448, 294 (b), 323, 364, 506 (ii) IPC and 3 of Tamil Nadu Property (Prevention of Damage & Loss) Act 1992, Section altered 147, 294 (b), 323, 506 (ii), 449, 302 & 201 IPC and 3 of T.N. Property (Prevention of Damage and Loss Act), 1992.	Due to the previous enmity of wedding on 02.10.2018 at 01.15 hours, at Appuvilai, Thiru.Boopashkannan and his associates trespassed into the complainant Ganapathipandian's house and assaulted the complainant's son Santhosraja and damaged the TV and threatened the complainant and kidnapped the complainant's son Santhosraja to Radhakrishnan's garden, Arumuganeri in AGR and Inova cars bearing registration number TN 22 DK 0001 and murdered him by causing bleeding injuries to him by assaulting with stick, rod and plastic pipe and produced the dead body of Santhosraja at Sathankulam Government Hospital. The case is under investigation.
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3. It is further stated in the grounds of detention that on 4.10.18 at about 1430 hours, the defacto complainant Murugan came out from Ambal Hotel near Radhapuram bus stand, at that juncture, the detenu and his associates waylaid him and brandished a knife and snatched a sum of Rs.300/-. The defacto complainant raised an alarm and public nearby gathered and they were threatened with dire consequences. Taking advantage of the situation, the detenu and his associates fled away from the scene of occurrence.

4. Radhapuram Police Station, on receipt of complaint from the defacto complainant, registered a case in Crime No.206/2018 u/s 341, 294 (b), 387 and 506 (ii) IPC. The detenu was already under incarceration in connection with three adverse cases and was formally arrested in connected with the ground case on 15.10.18 and produced before the Court of Judicial Magistrate, Valliyoor and the order of period of remand expires on 30.11.18.

5. The 2nd respondent/Detaining Authority, on being satisfied that the above stated activities of the detenu are prejudicial to public order and peace, clamped the impugned order of detention, challenging which the present habeas corpus petition has been filed.

6. Learned counsel appearing for the petitioner drew the attention of this Court to the counter affidavit and also to pages



231 and 303 of the booklet and submitted that the arrest intimation form available in page-231 of the booklet is relatable to the third adverse case and the contents of the same would disclose that arrest intimation of the detenu in connection with the third adverse case was informed to one Kumar, through mobile phone. It is the submission of the learned counsel for the petitioner that Kumar is the brother of the detenu. However, the said Kumar denied the fact that such intimation was given to him and the contents of the arrest intimation form available at page-231 neither disclose the mobile number of Kumar nor there is an indication as to the text of the message said to have been given to Kumar.

7. Insofar as the ground case is concerned, it is submitted by the learned counsel for the petitioner that the arrest intimation was given to the jail official of Central Prison, Palayamkottai and not to the relatives of the detenu. According to the learned Addl. Public Prosecutor, since the detenu was in custody and incarcerated in connection with the third adverse case and confined to the said prison, while effecting the arrest of the detenu in the ground case, the arrest intimation was given to the jail official.

8. This Court posed a specific question to the learned Addl. Public Prosecutor as to whether the jail official, in turn, has informed the arrest and detention of the detenu in connection with the ground case to his relatives for which the answer was in the negative. In the considered opinion of this Court, in the light of the guidelines laid down by the in Supreme Court in ***D.K.Basu' - Vs - State of West Bengal (1997 (1) SCC 416)*** it is obligatory on the part of the authorities effecting arrest of the detenu to inform the relatives of his arrest and incarceration so that they could take steps to protect the constitutional right of the detenu. Admittedly, in the case on hand, the said guideline has not been followed and, therefore, in the considered opinion of this Court, the abovesaid infirmity definitely vitiates the order of detention and the same is liable to be quashed.

9. Accordingly, the habeas corpus petition is allowed and the impugned order of detention passed by the 2nd respondent in M.H.S. Confdl No.137/2018 dated 22.11.2018 is set aside. The detenu, Boopashkannan, S/o Vellasamy, lodged in Central Prison, Palayamkottai, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (C.O)

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Sub Assistant Registrar(CS)



To

1. The Prl. Secretary to the Government
Government of Tamil Nadu
Home, Prohibition & Excise Dept.
Fort St. George
Chennai 600 009.
2. The District Collector & District Magistrate
Tirunelveli District, Tirunelveli.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai - 9.
5. The Addl. Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) NO. 1737 OF 2018

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CS: (14/06/2019) 5P 6C