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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 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.1738 of 2018

Vijaya

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

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

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in P.D.O.No.33/2018, dated 26.11.2018 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely Nagaraj, S/o Karuppaiah, Male, aged about 27 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner	:	Mr.K.M.Karunakaran for M/s A.Banumathy
For Respondents	:	Mr.K.Dinesh Babu Additional Public Prosecutor

ORDER

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

The aunty of the detenu is the petitioner and challenging the impugned order of detention dated 26.11.2018, 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 branded him as 'Goonda' in P.D.O.No.33/2018, has filed the present Habeas Corpus Petition.



2. A perusal of the grounds of detention passed by the second respondent dated 26.11.2018, would disclose that the detenu came to adverse notice in the solitary case registered by the Alangudi Police Station in Cr.No.179 of 2018. In paragraph No.3 of the grounds of detention, it is averred among other things that on 29.10.2018 at 10.00 hours, when the Sub-Inspector of Police, Alangudi Police Station was on duty, one Chithiraivelu, a resident of Kulamangalam North, Alangudi Taluk, Pudukkottai District lodged a complaint stating among other things that his daughter viz., Kasthoori, aged about 19 years, working in Venkateswara Medical, Alangudi is missing from 28.10.2018. On the basis of the complaint, the above said case in Cr.No.179/2018 was registered for "women missing". Subsequently, the enquiry revealed that the victim girl was abducted, brutally raped by the detenu and also murdered by him. Subsequently, sections of law were altered into Sections 302, 201 I.P.C. @ 147, 417, 376, 302 and 201 I.P.C. The detenu was arrested on 02.11.2018 and thereafter he was produced before the Judicial Magistrate, Alangudi on 03.11.2018 and was remanded to judicial custody and it was extended till 16.11.2018.

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 appearing for the petitioner has invited the attention of this Court to paragraph No.5 of the detention order and would submit that the bail application filed by the detenu in connection with ground case in Cr.M.P.No.3154 of 2018 was dismissed on 26.11.2018 and in order to arrive at a subjective satisfaction that the detenu is likely to come out on bail and would indulge in such activities which are prejudicial to the maintenance of public order, no material whatsoever has been placed by the sponsoring authority before the detaining authority and in the absence of such vital material, the subjective satisfaction arrived at by the detaining authority in this regard, is wholly vitiated and hence, prays for quashment of the impugned order of detention.

5. Per contra, the learned Additional Public Prosecutor has drawn the attention of the Court to the counter affidavit filed by the second respondent and 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, has passed the detention order and hence, prays for dismissal of the Habeas Corpus Petition.

6. THIS Court has considered the rival submissions and perused the materials placed before this Court.



7. A perusal of paragraph No.5 of the detention order would disclose that in order to arrive at a subjective satisfaction, no material whatsoever has been relied upon by the detaining authority to arrive at a conclusion that the detenu is likely to come out on bail and thereafter would indulge in such activities which are prejudicial to the maintenance of public order. In the considered opinion of this Court, in the absence of such vital material, the subjective satisfaction arrived at by the detaining authority in this regard, is wholly vitiated and on this ground, the impugned order of detention warrants interference.

8. In the result, this Habeas Corpus Petition is allowed and the order of detention in P.D.O.No.33/2018 dated 26.11.2018 passed by the second respondent, is quashed and the detenu namely, Nagaraj, S/o Karuppaiah 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(Writs)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Magistrate and
District Collector,
Pudukkottai District, Pudukkottai.
- 3.The Superintendent of Prison,
Central Prison,Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai.

+2CC TO MR.A.BANUMATHY, Advocate Sr. No. 67364 & 66891

H.C.P(MD)No.1738 of 2018

04.06.2019

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