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H.C.P(MD)No.165 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD) No.165 of 2019

Karuthapandi

... Petitioner

Vs.

1.State of Tamil Nadu,
represented by
The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai - 600 009.

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

3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

4.The Inspector of Police,
Manur Police Station,
Manur,
Tirunelveli District.

... 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 pertaining to the proceedings of the second respondent made in his proceedings in No.M.H.S.Confdl.No.144/2018, dated 03.12.2018 and served on 04.12.2018 and quash the same and set the petitioner's son at liberty, namely, Kokki Kumar alias Kumar alias Veil Kumar, son of Karuthapandi, aged about 24 years, to be detained at Central Prison, Palayamkottai, Tirunelveli District.

For Petitioner

: Mr.S.Krishnan

For Respondents

: Mr.K.Dinesh Babu

Additional Public Prosecutor



ORDER

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

The petitioner is the father of the detenu and challenging the legality of the impugned order of detention dated 03.12.2018, passed by the second respondent, under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, 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) and branding him as 'Goonda' in M.H.S.Confdl.No.144/2018, came forward to file the present Habeas Corpus Petition.

2.A perusal of the Grounds of Detention dated 03.12.2018, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Kokkikumar alias Kumar alias Veilkumar came to the adverse notice in the following two cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Thalaiyuthu Police Station Cr.No.127 of 2018	147, 294(b), 506(ii) I.P.C. and 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 Section altered to 147, 294(b), 506 (ii) I.P.C. and 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act
2.	Manur Police Station Cr.No.383 of 2018	147, 148, 149, 341, 294(b) and 302 I.P.C. and Section 3(1)(s), 3(2)(v) Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Sections 294 (b), 387 and 506(ii) I.P.C. in Manur Police Station Crime No.391 of 2018 (ground case) on the basis of the complaint given by the defacto complainant viz., Rasdha. The detenu was arrested on 07.11.2018 and produced before the Court of Judicial Magistrate No.V, Tirunelveli and remanded to judicial custody on that day and his remand period expires on 06.12.2018. 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.



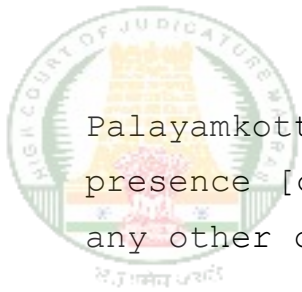
3. The learned counsel appearing for the petitioner has drawn the attention of this Court to pages 129 to 169 of the booklet and would submit that according to the sponsoring authority the arrest intimation pertains to the second adverse case was attempted to be served on the mother of the detenu and since she refused to receive the intimation, the same was affixed in the presence of V.A.O, Thalaiyuthu, however, there is no material or whatsoever has been produced. It is further submitted that in the ground case, which took place two days prior to the second adverse case, the arrest intimation S.M.S. was sent to the father of the detenu through the mobile number 9000396100 and the same procedure could have been adopted by the sponsoring authority and in the light of the non-communication of the arrest intimation, the guidelines given by the Hon'ble Apex Court reported in **(1997) 1 SCC 416 [D.K. Basu v. State of West Bengal]** is violated. Therefore, he prays for quashment of the impugned order of detention.

4. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State 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 materials placed before it.

6. As rightly pointed out by the learned counsel appearing for the petitioner, though in the ground case the arrest intimation was sent to the father of the detenu on 07.11.2018, in the subsequent arrest with regard to the second adverse case on 09.11.2018, according to the sponsoring authority the arrest intimation was attempted to be served on the mother of the detenu, who refused to receive the same and therefore, the same was affixed in the presence of V.A.O., for which no material has been placed. The materials placed before this Court would indicate that the arrest intimation in respect of the second adverse case has not been served upon the relatives of the detenu. Therefore, the guidelines of the D.K. Basu's case (cited supra) is violated and as such the impugned order of detention is vitiated and is liable to be set aside.

7. 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, Tirunelveli District in M.H.S.Confdl.No.144/2018 dated 03.12.2018. Consequently, the detenu, namely, Kokkikumar alias Kumar alias Veilkumar, son of Karuthapandi, aged about 24 years, who is now detained at Central Prison,



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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 (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai - 600 009.
- 2.The District Collector cum District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent,
Central Prison, Palayamkottai
- 4 The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-600 009.
- 5.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
- 6.The Inspector of Police,
Manur Police Station,
Manur,
Tirunelveli District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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16.08.2019

sj
JM/19.09.2019/4P/8C