



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2019

CORAM:

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

H.C.P (MD)No.171 of 2019

B.Backiyavathi

... 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,
O/o.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

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

... 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 of respondent No.2 in C.O.C.No.04/2019 dated 29.01.2019 and quash the same and direct the respondents to produce the body or person of the petitioner's son-in-law, namely, Gangaraj, S/o.Ramalingam, aged about 32 years, now detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

**ORDER**

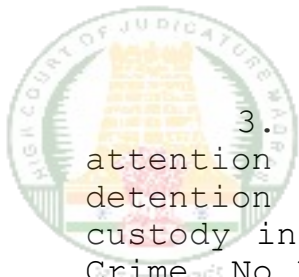
(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The paternal aunt of the detenu is the petitioner herein and challenging the impugned order of detention dated 29.01.2019 passed by the second respondent, branding him as a 'Sand Offender' 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 29.01.2019, passed by the second respondent herein, the detenu, viz., Ganagaraj came to the adverse notice in the following two cases:-

Sl. No.	Name of the Police Station and Crime No.	Sections of Law
1.	Manalmedu Police Station Cr.No.223 of 2018, dated 07.07.2018	379 IPC r/w 21(i) of the Mines and Mineral (Development and Regulation) Act, 1957
2.	Manalmedu Police Station Cr.No.347 of 2018, dated 03.11.2018	379, 430 IPC r/w 21 (i) of the Mines and Mineral (Development and Regulation) Act, 1957

It is further stated in the grounds of detention that the detenu was also involved in the commission of offence in Manalmedu Police Station in Crime No.377 of 2018 and the Sponsoring Authority, found that the detenu already surrendered before the Judicial Magistrate No.II, Panruti on 03.12.2018 in connection with the case in Crime No.378 of 2018 for the commission of offence under Sections 341, 506 (ii) & 302 IPC, registered by the Manalmedu Police Station, formally effected the arrest in the ground case also on 18.12.2018 and produced before the Judicial Magistrate No.I, Mayiladuthurai and was ordered to be remanded to judicial custody till 31.12.2018. 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 environment and public interest and as such, branded him as a Sand Offender 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.

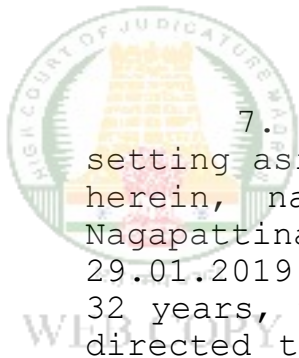


3. The learned counsel for the petitioner has drawn the attention of this Court to paragraph Nos.3 & 5 of the grounds of detention and would submit that admittedly, the detenu is under custody in connection with the grave offence of Section 302 IPC in Crime No.378 of 2018 registered by the very same Sponsoring Authority and while deriving the subjective satisfaction, he has failed to take note of the same and even assuming that the detenu is going to come out on bail in the ground as well as second adverse case, still it would not be possible for him to indulge in activities, which are prejudicial to the maintenance of public order and peace, for the reason that admittedly, he is already under custody in connection with Crime No.378 of 2018 and therefore, the subjective satisfaction derived by the Detaining Authority is wholly vitiated 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, admittedly, the detenu is under custody in connection with Crime No.378 of 2018, registered by the very same Sponsoring Authority for the commission of offence under Sections 341, 506(ii) & 302 IPC and was formally arrested in connection with the ground case on 18.12.2018. The Detaining Authority, while deriving the subjective satisfaction as to the 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 peace, has totally failed to take into consideration the arrest and incarceration of the detenu in Crime no.378 of 2018 and as rightly pointed out by the learned Counsel for the petitioner, even for the sake of arguments that the detenu is going to come out on bail in the ground case as well as second adverse case, still it is not possible for the detenu to indulge in such kind of activities for the reason that he is already under judicial custody in connection with the case which involves grave offence. Therefore, this Court is of the view that the subjective satisfaction derived by the Detaining Authority in that regard is totally vitiated, as such, the impugned order of detention is liable to be set aside and the same is accordingly, quashed.



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 and District Magistrate, Nagapattinam District, Nagapattinam, in C.O.C.No.04/2019 dated 29.01.2019. Consequently, the detenu, namely, Ganagaraj, aged about 32 years, who is now detained at Central Prison, Tiruchirappalli 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 (C.O)

// True Copy //

Sub Assistant Registrar(CS)

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,
O/o.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.171 of 2019

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CS(19.08.2019) 4P 6C