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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.201 of 2019

Mahadevan

... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
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 connected with the detention order of the second respondent in M.H.S.Confdl.No.155/2018, dated 27.12.2018 and quash the same and direct the respondents to produce the body or person of the detenu, by name, Mahadevan, son of Vijayaragava Narayanan, aged about 23 years, now confining at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

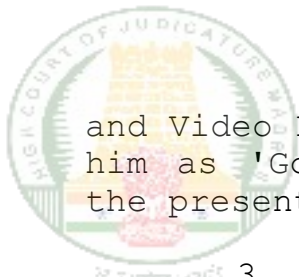
For Petitioner : Mr.R.M.Arun Swaminathan

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 in this petition and challenging the impugned order of detention, dated 27.12.2018, 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 branding him as 'Goonda' in M.H.S.Confdl.No.155/2018, came forward to file the present Habeas Corpus Petition.

3. A perusal of the grounds of detention dated 27.12.2018 would disclose, among other things, that the detenu came to be adverse notice in the following cases:

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Thalaiyuthu Police Station Cr.No.275 of 2018	379 (Sand Theft) IPC
2.	Seevalaperi Police Station Cr.No.178 of 2018	294(b) and 506(ii) IPC

It is further stated in the grounds of detention filed in support of the impugned order of detention that on 18.11.2018 at 06.00 hours, on account of previous enmity, Mahadevan and his associates took Pauldurai on a motor cycle and went to Thamirabarani river near cremation yard at Rajavallipuram and assaulted with deadly weapons and amputated his head and left the body on the spot and on account of such a daring and cruel acts of them, the public in that locality were very afraid and there were law and order and public order problem. On the basis of the complaint given by the Village Administrative Officer, Palamadai village, a case in Cr.No.182 of 2018 under Sections 302 and 201 I.P.C., altered into Sections 147, 148, 149, 302, 201, 120(b) I.P.C., was registered.

4. The detenu was arrested on 20.11.2018 and produced before the learned Judicial Magistrate No.III, Tirunelveli and was ordered to be remanded till 02.01.2019.

5. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu is 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.

6. The learned Counsel for the petitioner has drawn the attention of this Court to paragraph 6 of the grounds of detention and would submit that in order to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail and indulging in such activities prejudice to the maintenance of public order, the detaining authority placed reliance on the order granting bail in similar case in CrI.O.P(MD)No.23030 of 2015 dated 11.12.2015, however, the similar case particulars relied on by the detaining authority to derive subjective satisfaction cannot be termed as similar for the reason that this Court, vide order dated 11.12.2015, passed in CrI.O.P(MD)No.23030 of 2015, has enlarged the co-accused in Cr.No.222 of 2015 on the file of Achanpudur Police Station, Tirunelveli District, on the ground that the co-accused were already granted bail and in the case on hand, none of the co-accused is enlarged on bail and all the co-accused



remain incarcerated and therefore, the subjective satisfaction derived by the detaining authority is vitiated and prays for quashment of the impugned order of detention.

7. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the detaining authority, on proper application of mind and after taking into consideration all the materials and the report submitted by the sponsoring authority, has rightly clamped the detention order and the subjective satisfaction arrived at by the detaining authority, in the facts and circumstances of the case, cannot be said to be fatal and hence, prays of dismissal of the Habeas Corpus Petition.

8. This Court has carefully considered the rival submissions and perused the materials placed before this Court.

9. As rightly pointed out by the learned Counsel appearing for the petitioner, the order granting bail in a similar case relied on by the detaining authority in CrI.O.P(MD)No.23030 of 2015, dated 11.12.2015, cannot be said to be similar for the reason that in paragraphs 5 and 6, while dealing with the case, it was averred that the co-accused were enlarged on bail and in the case on hand, none of the co-accused is enlarged on bail and all the co-accused remain incarcerated and in the light of the same, the subjective satisfaction arrived at by the detaining authority is vitiated and therefore, the impugned order of detention passed by the second respondent warrants interference.

10. In the result, the Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent, namely, the District Collector and District Magistrate, Tirunelveli District in M.H.S.Confdl.No.155/2018, dated 27.12.2018. Consequently, the detenu, namely, **Mahadevan**, son of Vijayaragava Narayanan, 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.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.



2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

4.The Joint Secetary to Government,
Public Law & Order,
Fort St.George, Chennai-09.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:
The Judicial Magistrate No.III,
Tirunelveli.

H.C.P(MD)No.201 of 2019
31.07.2019

JM/16.08.2019/4P/7C