



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.571 of 2019

Arumugam

... Petitioner

Vs.

1.State of Tamil Nadu,

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,
Tirunelveli District,Tirunelveli.

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

... 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 M.H.S.Confdl.No.43/2019 dated 17.06.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Arumugam, son of Palani, aged about 24 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu

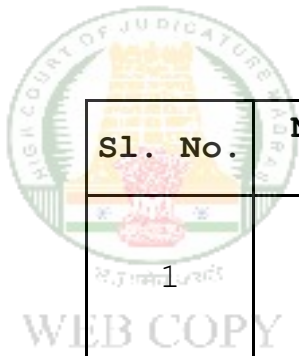
Additional Public Prosecutor

O R D E R

(Order of the Court was made by **B.PUGALENDHI, J.**)

The detenu himself is the petitioner herein and challenging the impugned order of detention dated 17.06.2019 passed by the second respondent, branding him as a "Goonda" 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 17.06.2019, passed by the second respondent would show that the detenu came to the adverse notice in the following cases:-

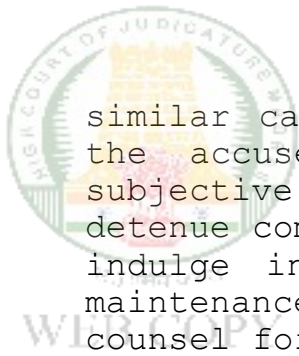


Sl. No.	Name of the Police Station and Crime No.	Section of Law
1	Nanguneri Police Station Cr.No.184 of 2016	379 IPC and 21(1)(iv) of Mines and Minerals (Development and Regulation) Act, 1957.
2	Nanguneri Police Station Cr.No.291 of 2017	379 IPC and 21(1) of Mines and Minerals (Development and Regulation) Act, 1957
3	Nanguneri Police Station Cr.No.16 of 2018	120(b), 302 IPC altered 120 (b), 302, 212, 449 IPC

It is further stated in the grounds of detention that when the defacto complainant, namely, Piraimuthu was going in front of Ruchi Hotel, the detainee and his associates waylaid and asked him to part with a sum of Rs.500/-. When he refused and raised an alarm, they snatched the sum of Rs.500/- from him. When the persons nearby came to rescue, they were threatened by the assailants with dire consequences and taking advantage of the situation, the detainee and his associates fled away from the scene of occurrence. Nanguneri Police Station, based on the complaint received from the defacto complainant, registered a case in Crime No.160 of 2019 for the commission of offence under Section 397 IPC (ground case).

3. The detainee was arrested on 28.05.2019, produced before the Court of Judicial Magistrate, Nanguneri and was ordered to be remanded to judicial custody. In respect of the first adverse case, anticipatory bail was granted to the detainee by this Court, in CrI.O.P.(MD)No.15744 of 2016, dated 29.08.2016. In respect of the second adverse case, the detainee was enlarged on bail by the learned Judicial Magistrate, Nanguneri, vide order dated 10.10.2017 in Cr.M.P.No.9456 of 2017. In respect of the third adverse case, he was enlarged on bail by the learned Judicial Magistrate, Nanguneri, vide order dated 08.05.2018 in Cr.M.P.No.4028 of 2018. In respect of the ground case, the bail petition filed by the detainee is pending in Cr.M.P.No.5564 of 2019, before the Sessions Court, Tirunelveli. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detainee were prejudicial to the maintenance of the public peace and order and as such, branded him as a Goonda 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.

4. The learned counsel for the petitioner would submit that admittedly, the detainee was granted the relief of bail and anticipatory bail in all the three adverse cases. In respect of the ground case, the bail petition filed by him is pending before the Sessions Court and the Detaining Authority, by relying upon a



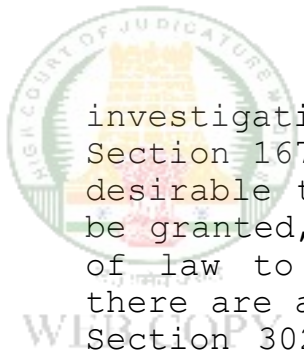
similar case in Cr.M.P.No.1803 of 2015, where bail was granted to the accused therein by the concerned Court, has derived the subjective satisfaction that there is every possibility of the detainee coming out on bail and that if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. It is further submitted by the learned counsel for the petitioner that the order granting bail in the above said case cannot be considered as a similar one for the reason that the concerned petitioner / accused therein did not have any antecedents, whereas, the detainee in the present case on hand, according to the impugned order of detention, is having three adverse cases and as such, the possibility of getting bail is very remote and the said aspect has been completely overlooked by the detaining authority and hence, prays for quashment of the impugned order of detention.

5. 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.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. Though the detainee was having three adverse cases, he was already enlarged on bail by the concerned Courts. The ground case was registered on 28.05.2019 and the bail application moved by him in respect of the ground case in Cr.M.P.No.5564 of 2019 on 14.06.2019 before the Sessions Court, Tirunelveli, is pending for disposal. However, the detaining authority has taken into consideration the bail granted by the Sessions Court, Tirunelveli, in a similar case in Cr.M.P.No.1803 of 2015 and has derived the subjective satisfaction that the detainee would come out on bail and indulge in activities which are prejudicial to the maintenance of public law and order. But, as rightly pointed out by the learned Counsel for the petitioner, the similar case referred to by the detaining authority is not similar for the reason that the accused therein was not having any antecedents, whereas, the detainee in the present case is having three adverse cases and as such, there is no real and imminent possibility of the detainee coming out on bail in the said case.

8. Moreover, a Full Bench of this Court in the decision reported in **(2007) 2 MLJ (Crl.) 1841**, in the case of **G.Kalaiselvi vs. State of Tamil Nadu**, has held that the Detaining Authority is required to come to a conclusion that there is a imminent possibility of the detainee being released on bail. The question as to whether there is a possibility of being released on bail depends upon several factors, such as, nature of offence, stage of the



investigation, the availability of statutory bail as envisaged under Section 167(2) proviso of Cr.P.C. Even though it is not possible nor desirable to enumerate the circumstances in which bail is likely to be granted, one can venture to say that it is very rare for a Court of law to grant bail during pendency of the investigation, when there are allegations of serious offences, such as, punishable under Section 302 or 395 IPC. Therefore, this Court is of the view that the detention order, impugned herein, is liable to be quashed and the same is accordingly, quashed.

9. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, District Collector and District Magistrate, Tirunelveli District, Tirunelveli, in M.H.S.Confdl.No.43/2019 dated 17.06.2019. Consequently, the detenu, namely, Arumugam, son of Palani, aged about 24 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 (CS-III)

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Sub Assistant Registrar(CS)

gk
To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Joint Secretary to Government,
Public (Law and order) Department,
Fort St.George, Chennai -9
- 3.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 4.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P(MD)No.571 of 2019

19.12.2019

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