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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.07.2019
CORAM

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

H.C.P (MD) No.94 of 2019

Raja

... 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 Collector and District Magistrate,
Thoothukudi District, Thoothukudi.

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the Respondent No.2 in H.S.(M)Confdl.No.01/19, dated 02.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Raja, Son of Paulthangasamy, aged about 32 years, now confining at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor
* * * * *

ORDER

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

The detenu himself is the petitioner and challenging the impugned order of detention dated 02.01.2019, 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 detention Order H.S.(M) Confdl.No.01/2019, has filed the present Habeas Corpus Petition.



2. A perusal of grounds of detention order dated 02.01.2019 would disclose that the detenu came to adverse notice in the following case:

Cr.No. 237 of 2016 on the file of Kayathar Police Station, under Sections 448, 341, 294(b) and 506(ii) I.P.C.

3. It is further stated that based on the complaint given by Tmt.Grace, a case in Cr.No.366 of 2018, was registered for the commission of offence under Section 302 I.P.C., on 12.12.2018, by the Inspector of Police, Kayathar Police Station. The detenu had surrendered before the Court of Judicial Magistrate, Thenkasi, on 13.12.2018 and was remanded to judicial custody and subsequently police custody was taken and afterwards he was once again produced before the Court of Judicial Magistrate No.II, Kovilpatti, on 20.12.2018 and he was remanded to judicial custody upto 03.01.2019.

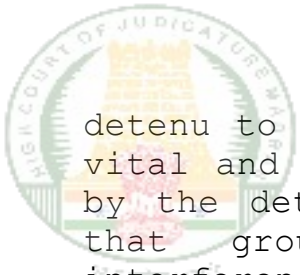
4. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu is prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

5. The learned Counsel appearing for the petitioner has drawn the attention of this Court to paragraph No.7 of the grounds of detention and would submit that though it is averred that "I am aware that accused Raja has tried to file bail petition before the appropriate Court in the ground case registered in Kayathar Police Station Cr.No.366/18 u/s 302 I.P.C.", no material, even alone cogent material is placed before the detaining authority to derive the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and would indulge in such further activities, which are prejudicial to the maintenance of public order and hence, prays for quashment of the impugned order of detention.

6. 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.

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

8. As rightly pointed out by the learned Counsel appearing for the petitioner, no materials whatsoever have been placed before the detaining authority, as to the steps taken by the



detenu to file an application for bail and in the absence of such vital and cogent material, the subjective satisfaction arrived at by the detaining authority is wholly vitiated and therefore, on that ground, the impugned order of detention warrants interference.

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9. In the result, this Habeas Corpus Petition is allowed and the order of detention in detention order H.S.(M) Confdl.No.01/2019, dated 02.01.2019 passed by the second respondent, is quashed and the detenu namely Raja, S/o Paulthangasamy 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 (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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 Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison, Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Additional Public Prosecutor, Madurai Bench of Madras High
Court, Madurai.
- 5.The Joint Secretary to Government, Public(Law & Order)
Fort. St.George, Chennai-9

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H.C.P (MD) No.94 of 2019
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