



WEB COPY

1

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 10.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD) NOS. 96 & 99 OF 2019

K.Chanakiyan .. Petitioner in HCP No.96/2019

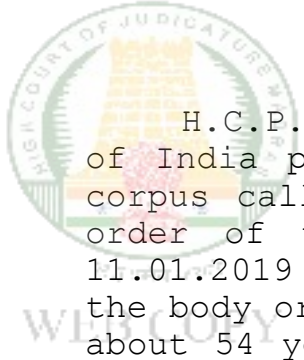
T.Kamayee .. Petitioner in HCP No.99/2019

- Vs -

1. The Prl. Secretary to the Government
Home, Prohibition & Excise Dept.
Secretariat, Chennai 600 009.
2. The District Collector & District Magistrate
Dindigul District,
Dindigul.
3. The Superintendent of Prison
Madurai Central Prison,
Madurai.

.. Respondents in all the petitions

H.C.P. No.96/2019 filed under Article 226 of the Constitution of India praying this Court for the issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in Detention Order No.03/2019 dated 11.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Krishnamoorthy @ Vathiyar Krishnamoorthy, S/o Perumal Thevar, aged about 54 years, detained as a 'Goonda' and now detained at Central Prison, Madurai, before this Hon'ble Court and set him at liberty.



H.C.P. No.99/2019 filed under Article 226 of the Constitution of India praying this Court for the issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in Detention Order No.02/2019 dated 11.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Tamilvanan, S/o Pandi, aged about 54 years, detained as a 'Goonda' and now detained at Central Prison, Madurai, before this Hon'ble Court and set him at liberty.

For Petitioners : Mr. R.Venkatesan

For Respondents : Mr. K.Dinesh Babu, APP

COMMON ORDER

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

The impugned orders of detention came to be passed against the respective detenu in one and the same ground case and, therefore, both the petitions are taken up together and disposed of by this common order.

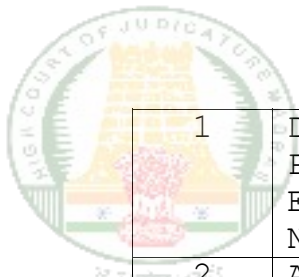
2. In HCP No.96 of 2019, the petitioner is the son of the detenu and in HCP No.99/2019, the petitioner is the wife of the detenu and challenge is made to the impugned orders of detention dated 01.11.2019 passed by the 2nd respondent under the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, 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 of 1982) branding the respective detenu as 'Goonda' with a view to preventing them from acting prejudicial to the interest of public health and public order. Aggrieved by the said orders, the present petitions have been filed.

3. As per the grounds of detention dated 11.01.2019, the detenu in HCP No.96/2019, came to adverse notice in the following cases :-

S. No.	Police Station & Crime No.	Section of Offence
1	Ammaiyanaickenur Police Station Crime No.327/2016	294(b), 353, 387, 506 (I) IPC @ 294 (b), 353 and 387 IPC

4. As per the grounds of detention dated 11.01.2019, the detenu in HCP No.99/2019, came to adverse notice in the following cases :-

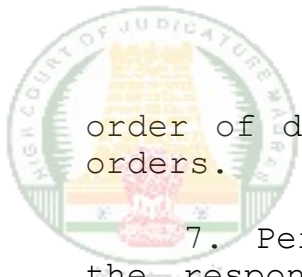
S. No.	Police Station & Crime No.	Section of Offence



1	Dindigul Prohibition & Excise Wing, Cr. No.837/2017	4 (1-k) of Tamil Nadu Prohibition Act, 1937
2	Ammaiyanaickenur Police Station Crime No.319/2016	4 (1-k) of Tamil Nadu Prohibition Act, 1937
3	Dindigul Prohibition & Excise Wing, Cr. No.949/2017	4 (1-k) of Tamil Nadu Prohibition Act, 1937 @ 4 (1-a) of Tamil Nadu Prohibition Act, 1937

5. It is further alleged in the grounds of detention that based on the complaint given by one M.Panchu, a resident of East Street, Goundenpatty, Pallapatty Post, Nikakottai Taluk on 5.12.2018, initially a case was registered by Ammaiyanaickenur Police Station in Crime No.330/2018 u/s 174 Cr.P.C. and in the course of investigation, the investigation office came to know of the fact that the deceased, viz., Murugan and Samayan were done to death and, therefore, the section of offence was altered to one u/s 302, 328, 201 IPC and Section 3 (2)(v) of the SC/ST (POA) Amendment Act, 2015. The detenu in HCP No.96/19 was arrested on 6.12.18 and he voluntarily came forward to give a confession statement based on which incriminating articles were seized and he was produced before the Judicial Magistrate, Nilakottai on 7.12.218 and remanded to judicial custody and the period of remand was periodically extended upto 7.1.19. The detenu in HCP No.99/19 was arrested on 6.12.18 and he voluntarily came forward to give a confession statement based on which incriminating articles were seized he was produced before the Judicial Magistrate, Nilakottai on 7.12.218 and remanded to judicial custody and the period of remand was periodically extended upto 7.1.19. The detaining authority, on being satisfied that the activities of the detenus are prejudicial to the maintenance of public peace and order, had clamped the respective orders of detention challenging which the present petitions have been filed.

6. Learned counsel appearing for the petitioners drew the attention of this Court to para-5 of the grounds of detention in both cases and submits that both the detenus were in custody in connection with the ground case and in order to arrive at the subjective satisfaction as to the real and imminent possibility of the detenus coming out on bail and indulge in activities prejudicial to the maintenance of public order, the detaining authority has placed reliance upon the order granting bail by the Madurai Bench of Madras High Court vide order dated 16.9.09 in CrI. O.P. (MD) No.7515/09. It is the submission of the learned counsel appearing for the petitioners that in the similar case concerned, the accused did not have any antecedents, but admittedly in these cases, the accused are having antecedents and, therefore, it cannot be construed as a similar case and, hence, the subjective satisfaction arrived at by the detaining authority in that regard vitiates the



order of detention and, hence, prays for quashment of the impugned orders.

7. Per contra, learned Addl. Public Prosecutor appearing for the respondents submits that the detaining authority, after due application of mind to the entire materials has arrived at the subjective satisfaction and clamped the orders of detention and, therefore, submits that no interference is called for with the impugned orders and pray for dismissal of the petitions.

8. This Court has carefully considered the rival submissions and perused the materials available on record.

9. As rightly pointed out by the learned counsel appearing for the petitioners, the order of this Court dated 16.9.09 in CrI. O.P. (MD) No.7515/09 came to be passed on the ground of period of incarceration of the concerned accused and the antecedents of the accused have not been referred to in the said order. However, in the case on hand, the detenus are having antecedents and, therefore, the order cannot be treated as a similar order and, therefore, the subjective satisfaction arrived at by the detaining authority is wholly vitiated and, therefore, the impugned orders of detention passed by the 2nd respondent are liable to be quashed.

10. Accordingly, the habeas corpus petitions are allowed and -

i) The impugned order of detention passed by the 2nd respondent in Detention Order No.03/2019 dated 11.1.19 is set aside. The detenu Krishnamoorthy @ Vathiyar Krishnamoorthy, S/o Perumal Thevar, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case/proceedings.

ii) The impugned order of detention passed by the 2nd respondent in Detention Order No.02/2019 dated 11.1.19 is set aside. The detenu Tamilvanan, S/o Pandi, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Prl. Secretary to the Government,
Home, Prohibition & Excise Dept.
Secretariat, Chennai 600 009.
2. The District Collector & District Magistrate,
Dindigul District, Dindigul.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai.
5. The Addl. Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) NOS. 96 & 99 OF 2019

10.07.2019

CS(25.07.2019) 5P 6C