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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)Nos.1754 and 1783 of 2018

H.C.P(MD)No.1754 of 2018:

Muniyammal

... Petitioner

Vs.

1.State of Tamil Nadu,
represented by its
Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai - 9.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent,
Central Prison,
Madurai.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the records pertaining to the proceedings of the second respondent made in his proceedings in No.55/BCDFGISSSV/2018, dated 22.11.2018 and quash the same and set the petitioner's son, by name, Kannan, son of Rajapandiyan at liberty from the third respondent.

For Petitioner : Mr.M.Jegadeesh Pandian

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

* * * * *

H.C.P(MD)No.1783 of 2018:

Vinothkumar @ Paruppu Vinoth

... 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 Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the records connected with the detention order of the second respondent in No.56/BCDFGISSSV/2018, dated 03.12.2018 and quash the same and direct the respondents to produce the body or person of the detenu, by name Vinothkumar @ Paruppu Vinoth, son of Dhanabalan, aged 29 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Dr.R.Alagumani

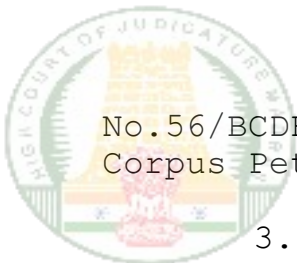
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor
* * * * *

COMMON ORDER

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

The petitioner in H.C.P(MD)No.1754 of 2018 is the mother of the detenu and challenging the legality of the impugned order of detention dated 22.11.2018, 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 No.55/BCDFGISSSV/2018, came forward to file the present Habeas Corpus Petition.

2. The petitioner in H.C.P(MD)No.1783 of 2018 is the detenu himself and challenging the legality of the impugned order of detention dated 03.12.2018, 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



No.56/BCDFGISSSV/2018, came forward to file the present Habeas Corpus Petition.

3. It is to be noted that the impugned orders came to be passed on the basis of a solitary ground case registered by B4-Keeraithurai Police Station in Cr.No.420 of 2018 for the commission of the offences under Sections 147, 148, 452, 294(b), 302, 506(ii) I.P.C.

4. A perusal of the grounds of detention dated 22.11.2018 and 03.12.2018, would disclose among other things that the detenus along with their associates, on account of previous enmity, trespassed into Sri Meenatchi Mill Labourers Co-operative Stores Shop at Kamarajapuram and attacked Muniyasamy with lethal weapons indiscriminately and as a consequence, he died.

5. Since the said murder took place in the broad daylight, the public ran away helter-skelter and the shop keepers closed their shops and the traffic was paralysed for some time. The detenu in H.C.P(MD)No.1754 of 2018, namely, Kannan, son of Rajapandian and two of his associates surrendered before the learned Judicial Magistrate, Nilakkottai, on 13.06.2018 and remanded to judicial custody till 18.06.2018 and subsequently, their police custody was taken and pursuant thereto, some incriminating articles were seized.

6. The detenu in H.C.P(MD)No.1783 of 2018 - Vinothkumar @ Paruppu Vinothkumar surrendered before the learned Judicial Magistrate No.IV, Madurai on 31.07.2018 and ordered to be remanded to judicial custody and subsequently, police custody was taken on 13.08.2018 and pursuant thereto, his confession statement was recorded and thereafter, he was remanded to judicial custody upto 06.12.2018. Sections of law were altered into Sections 147, 148, 120-B, 452, 294(b), 302 and 506(ii) I.P.C.

7. The detenu in H.C.P(MD)No.1754 of 2018 has filed an application for bail on the file of the learned Principal District and Sessions Judge, Madurai, in Cr.M.P.No.5646 of 2018 and so also, the detenu in H.C.P(MD)No.1783 of 2018 in Cr.M.P.No.5876 of 2018 and both the bail applications are pending.

8. Insofar as the detenu in H.C.P(MD)No.1783 of 2018 is concerned, the detaining authority, in order to derive a subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in future activities which are prejudicial to the maintenance of public order, had placed reliance upon the order passed by this Court in CrI.O.P(MD)No.16017 of 2018, dated 06.09.2018, which pertains to the co-accused, namely, Kaviyarasu @ Maheshboopathy.



9. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenus are prejudicial to the maintenance of public order, clamped the orders of detention and making a challenge to the same, the present Habeas Corpus Petitions came to be filed.

10. Dr.R.Alagumani, learned Counsel for the petitioner in H.C.P(MD)No.1783 of 2018 has invited the attention of this Court to page No.280 of the typed set of documents and would submit that in the said case, the petitioner concerned did not have any antecedents and considering the period of incarceration and other facts and circumstances of the case, he was enlarged on bail on 06.09.2018 and admittedly, the detenu in H.C.P(MD)No.1783 of 2018, is having series of cases registered against him and as such, it cannot be considered as a similar case and further pointed out that the application for bail was filed by the detenu even before passing the detention order, however, the detention order came to be passed belatedly and prays for quashment of the order of detention.

11. The learned Counsel for the petitioner in H.C.P(MD) No.1754 of 2018 would submit that the detention order is dated 22.11.2018 and it was served on the detenu on 23.11.2018, however, the booklet was served only on 28.11.2018 beyond the period of 5 days stipulated under Section 8 of the Tamil Nadu Act 14 of 1982 and in the absence of serving of booklet, he has been deprived of an opportunity of making effective representation for revoking the order of detention and therefore, the same would be in violation of Article 22(5) of the Constitution of India and prays for quashment of the order of detention.

12. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State would submit that the antecedents of both the detenus are notorious as they repeatedly involved in series of offences and on account of their activities, there is a serious repercussion in maintaining the law and order as well as public peace and tranquillity and therefore, the detaining authority taking into consideration all the facts and circumstances of the case and after full application of mind, has rightly clamped the impugned orders of detention and prays for the dismissal of these Habeas Corpus Petitions.

13. This Court has paid it's anxious consideration and best attention to the rival submissions and perused the materials placed before this Court.

14. As rightly pointed out by the learned Counsel for the petitioner in H.C.P(MD)No.1754 of 2018, the booklet came to be served beyond the period of 5 days after passing the impugned order of detention and the same is in violation of Section 8 of the Tamil Nadu Act 14 of 1982 and insofar as the impugned order of detention



passed in H.C.P(MD)No.1783 of 2018 is concerned, the similar order relied on by the detaining authority to derive subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in future activities which are prejudicial to the maintenance of public order, cannot be said to be similar for the reason that in respect of the co-accused who was enlarged on bail in the said case, he did not have any antecedents and whereas the detenu is having antecedents.

15. Insofar as the detenu in H.C.P(MD)No.1754 of 2018 is concerned, though the provision says that the grounds of detention have to be served not later than 5 days from the date of detention and there are series of judgments which lay down the proposition that it should be accompanied by the grounds of detention, admittedly, it came to be served beyond the period of 5 days than the stipulated period. Insofar as the detenu in H.C.P(MD)No.1783 of 2018 is concerned, the similar order relied on by the detaining authority cannot also be said to be similar.

16. In the light of the above reasons, the impugned orders of detention passed against the detenus are liable to be quashed.

17. In the result,

(i) H.C.P(MD)No.1754 of 2018 is allowed and the detention order in No.55/BCDFGISSSV/2018, dated 22.11.2018 passed by the second respondent is quashed and the detenu, namely, Kannan, son of Rajapandiyan, 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; and

(ii) H.C.P(MD)No.1783 of 2018 is allowed and the detention order in No.56/BCDFGISSSV/2018, dated 03.12.2018 passed by the second respondent is quashed and the detenu, namely, Vinothkumar @ Paruppu Vinoth, son of Dhanabalan, 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(CO)

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Sub Assistant Registrar(CS)

rsb

To

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

<https://hcservices.ecourts.gov.in/hcservices/>
Chennai - 600 009.



2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent,
Central Prison,
Madurai.

4. The Joint Secretary to Government,
Public (Law & order),
Fort St. George, Chennai - 9.

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

H.C.P(MD)Nos.1754 and 1783 of 2018
21.06.2019

svn(CO)
TR (12.07.2019) 6P 6C