



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P (MD) No. 1537 of 2018

Paramasivam @ Kodeeswaran

... Petitioner

Vs.

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

2. The District Collector and the District Magistrate,
Thoothukudi District,
Thoothukudi.

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

... 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 H.S.[M] Confdl.No.28/2018 dated 17.10.2018 and quash the same and direct the respondents to produce the detenu by name Ponmuthupandi, son of Paramasivam @ Kodeeswaran, aged about 26 years, now detained in Palayamkottai Central Prison before this Hon'ble Court and set him at liberty forthwith.

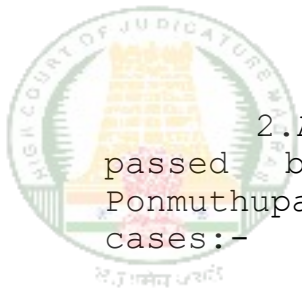
For Petitioner : Mr.R.Vinoth Bharathi

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 father of the detenu is the petitioner and challenging the impugned order of detention dated 17.10.2018 passed by the 2nd respondent, in and by which, the detenu has been branded 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), came forward to file the present habeas corpus petition.



2.A perusal of the Grounds of Detention dated 17.10.2018, passed by the 2nd respondent herein, the detenu, viz., Ponmuthupandi came to the adverse notice in the following three cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Sankaralingapuram Police Station Cr.No.67 of 2016	294(b), 324 and 506(ii) I.P.C.
2.	Sankaralingapuram Police Station Cr.No.69 of 2016	341, 294(b), 302 and 120(b) I.P.C.
3.	Kovilpatti East Police Station Cr.No.279 of 2018	341, 294(b), 387 and 506(ii) I.P.C.

It is further stated in the grounds of detention that the Sub-Inspector of Police in Kovilpatti West Police Station on receipt of a secret information along with his party visited the house of the detenu at North Street, Goundampatti, Vilathikulam in order to execute NBW pending against him in connection with Cr.Nos.117 and 175 of 2013 on the file of the Kovilpatti West Police Station and Cr.Nos.631 of 2013 and 1023 of 2014 on the file of Kovilpatti East Police Station and while they went there to execute the warrant, he has abused and threatened them with dire consequences and thereby prevented the public servants from discharging the public duty. The Sub-Inspector of Police lodged a complaint on that incident. Based on the said complaint, a case in Crime No.45 of 2018 was registered by the Sankaralingapuram Police Station for the commission of the offences u/s. 294(b), 307, 324, 323, 332 and 506(ii) IPC (ground case) and took up the case for investigation. The detenu was arrested on 24.08.2018 and he was produced before the Judicial Magistrate, Vilathikulam on 24.08.2018 and remanded to Judicial Custody till 07.09.2018 and subsequently his remand was extended upto 17.10.2018. The Detaining Authority on a perusal and consideration of the materials has derived the subjective satisfaction that the activities of the detenu 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.

3. The learned counsel for the petitioner would submit that in connection with the third adverse case the detenu was formally arrested on 24.08.2018 and he did not file any bail application in the third adverse case and the ground case and the sponsoring authority has not produced any materials or whatsoever to show that attempts are being made by the detenu to file bail applications in



the third adverse case and the ground case and in paragraph 7 of the grounds of detention it has been stated that attempts are being made to file bail application in ground case alone and in the absence of any material to that effect and as to the filing the bail application in the third adverse case the subjective satisfaction derived by the detaining authority is vitiated and hence, prays for quashment of the impugned order of detention.

4. 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.

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

6. As rightly pointed out by the learned counsel for the petitioner, admittedly the detenu did not file any bail application either in the third adverse case or in the ground case and the detaining authority has merely stated that the detenu has tried to file bail application in the ground case and to derive such a subjective satisfaction no material or whatsoever has been produced by the sponsoring authority. In the absence of such positive material as to the attempts being made for filing bail application in the ground case as well as the third adverse case, the impugned order of detention is vitiated and therefore, the impugned order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, The District Collector and District Magistrate, Thoothukudi District in H.S.Confdl.No.28/2018 dated 17.10.2018. Consequently, the detenu, namely, Ponmuthupandi, son of Paramasivam @ Kodeeswaran, aged about 26 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

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Sub Assistant Registrar (CS)

sj



To

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

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TR (19.06.2019) 4P 6C