



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1759 of 2018

Sabari

... 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 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 the Respondent No.2 in No.57/BCDFGISSSV/2018 dated 05.12.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Sabari, son of Irulandi, aged about 32 years, now detained at Madurai Central Prison, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner

: Mr.R.Alagumani

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 detenu himself is the petitioner and challenging the legality of the impugned order of detention dated 05.12.2018 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, Goondas, Slum Grabbers and video Pirates Act, 1982 (Tamil Nadu Act 14/1982), came forward to file the present Habeas Corpus Petition.

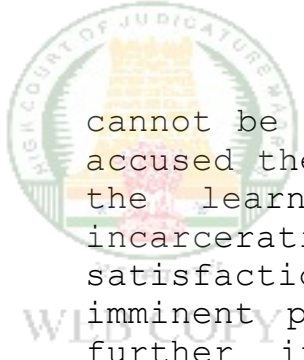


2. A perusal of the Grounds of Detention dated 05.12.2018, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Sabari came to the adverse notice in the following case:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	B6 Jaihindpuram Police Station Cr.No.582 of 2018	Man Missing altered into Section 147, 148, 364, 294(b), 302 and 201 IPC.

It is further stated in the grounds of detention that on 15.10.2018 at 08.45 hours, when the defacto complainant Mani, a resident of Solaialagupuram, Madurai and an auto-driver was standing near Murugan Tiffin Centre, Solaialagupuram, the detenu came there and threatened him to give money and when it was refused he took a knife and put it on Mani's stomach and robbed Rs.700/- from his shirt pocket and when he raised alarm, the general public gathered and they were also threatened with dire consequences by brandishing the knife and taking advantage of the situation, he fled away from the scene. Based on the complaint lodged by the defacto complainant, B6 Jaihindpuram Police, Madurai registered a case in Crime No.677 of 2018 for the commission of the offences under Sections 392 r/w 397 and 506(ii) I.P.C. (ground case) and the case is under investigation. Pursuant to the registration of the F.I.R., the detenu was arrested on 15.10.2018 and was produced before the Judicial Magistrate No.IV, Madurai on the same day and was ordered to be remanded till 29.10.2018 and it was extended till 10.12.2018. The Detaining Authority on being satisfied that the activities of the detenu were prejudicial to the maintenance of the public peace and order, 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 appearing for the petitioner has drawn the attention of this Court to paragraph 5 of the detention order and would submit that the detenu is in custody in connection with the ground case as well as the adverse case and the bail application filed by the detenu in the ground case was dismissed by the Court of Judicial Magistrate No.IV, Madurai in Cr.M.P.No.6042 of 2018 and with regard to the same another bail application was filed in Cr.M.P.No.5749 of 2018 and the same is pending and in order to derive the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and will involve in further activities, which are prejudicial to the maintenance of the public order, reliance has been placed upon the order granting bail in Cr.M.P.No.1732 of 2016 dated 30.03.2016 by the Court of Principal Sessions Judge, Madurai. According to the learned counsel appearing for the petitioner, it



cannot be termed as a similar case for the reason that though the accused therein had previous cases, all had ended in acquittal and the learned Judge has taken into account the period of incarceration also and in the light of the above, the subjective satisfaction derived by the detaining authority as to the real and imminent possibility of the detenu coming out on bail and will further indulge in activities which are prejudicial to the maintenance of public order is vitiated and therefore, he 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 counter affidavit, would submit that taking into account the gravity of the offence, which would have an effect on the society, 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, the reliance placed by the Detaining Authority with regard to the similar order dated 30.03.2016, in CrI.M.P.No.1732 of 2016, on the file of the Court of Principal Sessions Judge, Madurai in granting bail cannot be considered as a similar case for the reason that the concerned petitioner in the said bail application though had previous cases, all the cases had ended in acquittal and the period of incarceration was also taken into consideration while enlarging the concerned accused on bail and in the light of the above, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated. Hence, on the sole ground, the impugned order of detention warrants interference.

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 Commissioner of Police, Madurai City in No.57/BCDFGISSSV/2018 dated 05.12.2018. Consequently, the detenu, namely, Sabari, son of Irulandi, aged about 32 years, who is now detained at Central Prison, Madurai 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 (CO)

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To

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 District.
4. The Joint Secretary to Government,
Public (Law & Order) Fort St. George, Chennai - 600 009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

TS (16.07.2019) 4P 6C

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