



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2019

CORAM:

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**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**  
**and**  
**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

H.C.P (MD) No.1165 of 2018

Radheshyam

... Petitioner

Vs.

- 1.The Secretary to Government of India,  
Ministry of Home Affairs,  
Department of Internal Security,  
North Block,  
New Delhi - 110 001.
- 2.The Principal Secretary to Government,  
Public (Law and Order-F) Department,  
Secretariat,  
Chennai - 600 009.
- 3.The Commissioner of Police,  
Tiruchirappalli City,  
Tiruchirappalli.
- 4.The Superintendent of Prison,  
Central Prison,  
Coimbatore.

... 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.3 in C.No.01/NSA/Detention/CPO/TC/2018, dated 19.07.2018, passed under Section 3(2) of the National Security Act, 1980 and quash the same and direct the respondents to produce the detenu by namely Krishna Murari Tiwari, S/o.Gauri Sankar, Male, aged about 27 years, now detained at Central Prison, Coimbatore, before this Court and set him at liberty forthwith.



For Petitioner

: Mr.K.M.Karunakaran

For Respondents

: Mr.V.Kathirvelu,  
Assistant Solicitor General  
Assisted by  
Mr.C.Nandagopal,  
Central Government Standing  
Counsel for R.1

Mr.K.Chellapandian,  
Additional Advocate General  
Assisted by  
Mr.K.Dinesh Babu,  
Additional Public Prosecutor  
for R.2 to R.4

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**ORDER**

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

The brother-in-law of the detenu is the petitioner herein and challenging the impugned order of detention dated 19.07.2018, passed by the third respondent, branding the detenu as an 'Anti Social Element' under the provisions of Section 3[2] of the National Security Act, 1980 (Central Act 65 of 1980) read with the Government Order in G.O.Ms.No.278, Public (Law and Order-F) Department, dated 13.04.2018, under Section 3[3] of the said Act, he has filed the present habeas corpus petition.

2. A perusal of the Grounds of Detention dated 19.07.2018, passed by the third respondent herein, would disclose that the detenu came to adverse notice in respect of Crime No.622 of 2015, Avinasi Police Station, Tiruppur District, for the commission of offence under Sections 3 r/w 25(1B)(a)5 r/w 15(1)(a) of Arms Act, 1959 @ 25(1B)(a) of Arms Act, 1959. It is further stated in the grounds of detention that on 26.01.2018, at about 22.00 hours, the Inspector of Police, Organised Crime Intelligence Unit, Thanjavur and in-charge of Tiruchirappalli Unit, received an intelligence input that a gang was trying to sell pistols and bullets in Tiruchirappalli and therefore, mounted a surveillance team and apprehended one Parameswaran and on a search, they found a 7.65 mm pistol and five bullet cartridges and his confession lead to the arrest of two persons, namely, Nagaraj and Siva and their interrogation revealed the names of two more persons. In pursuant to the admissible portion of the confession statement of the apprehended accused, incriminating materials were also seized.

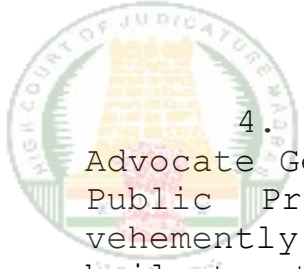
<https://hcservices.ecourt.gov.in/hcsefiles/> Based on the report of the Inspector of Police, Organised Crime Intelligence Unit, Thanjavur and in-charge of



Tiruchirappalli Unit, a case was registered in Crime No.156 of 2018, by the Cantonment Police Station, for the commission of offence under Sections 25(1-A), 25(1-B)(a) of Arms Act, 1959, r/w Sections 399 & 402 IPC. The arrested accused were remanded to judicial custody on 27.01.2018 and in the meantime, the case was transferred to CBCID by the orders of the Director General of Police and hence, a case was registered in Tiruchirappalli CBCID OCU Crime No.01 of 2018, for the commission of offence under Sections 25(1-A), 25(1-B)(a) of Arms Act, 1959, r/w Sections 399 & 402 IPC.

2.2. The arrested accused were taken into custody and the confession statement of the one of the accused revealed the name of the detainee herein. Based on the same, a special team went to Bina, Madhya Pradesh and effected the arrest on 11.02.2018 near Bina Railway Station and he was produced before the jurisdictional First Class Magistrate for transit warrant and later on, he was produced before the Court of Judicial Magistrate No.6, Tiruchirappalli, on 14.02.2018 and was ordered to be remanded to judicial custody till 23.02.2018. On 03.04.2018, the Sections of the case were altered from 25(1-A), 25(1-B)(a) of Arms Act, 1959, r/w Section 399 & 402 IPC to Sections 25(1-AA), 25(1-B)(a) of Arms Act, 1959, r/w Sections 399 & 402 IPC. In the ground case, the detainee was enlarged on statutory bail by the learned Judicial Magistrate No.6, Tiruchirappalli, on 25.05.2018 and he continues to be under incarceration in connection with the adverse case. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detainee were prejudicial to the maintenance of the public peace and order and as such, branded him as an Anti-Social Element and detained him under the provisions of the National Security Act, 1980 and challenging the legality of the same, the present Habeas Corpus Petition is filed.

3. The learned counsel for the petitioner would draw the attention of this Court to Paragraph No.4 of the Grounds of Detention and would submit that admittedly, the detainee did not file any bail application in the ground case so far and the Detaining Authority, in order to derive the subjective satisfaction as to the real and imminent possibility of the detainee coming out on bail and indulge in activities which are prejudicial to the maintenance of public order, peace and tranquillity, has placed reliance upon the order granting bail to the co-accused in CMP.No.6837 of 2015, dated 25.09.2015, by the Judicial Magistrate, Avinasi and would submit that in the absence of any material as to the steps taken by the detainee to file an application for bail, the subjective satisfaction derived by the Detaining Authority in this regard is wholly vitiated and prays for the impugned order of detention.



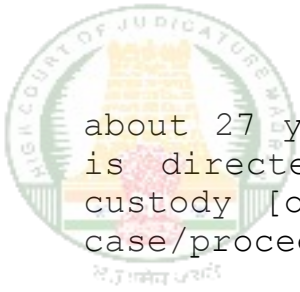
4. Per contra, Mr.K.Chellapandian, learned Additional Advocate General, assisted by Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for respondents 2 to 4, would vehemently contend that admittedly, the order granting statutory bail to the detenu in the ground case was based upon his application and therefore, the Detaining Authority has rightly derived the subjective satisfaction that there is an real and imminent possibility of the detenu, who is an Anti-Social Element, coming out on bail and taking into consideration the heinous nature of the offence, which may result in spreading of the Gun culture, prays for dismissal of this Habeas Corpus Petition.

5. Mr.V.Kathirvelu, learned Assistant Solicitor General, assisted by Mr.C.Nandagopal, learned Central Government Standing Counsel, for the first respondent, apart from supporting the arguments of the learned Additional Advocate General appearing for the State of Tamil Nadu, 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.

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

7. Perusal of the materials placed before this Court would disclose that the detenu was enlarged on statutory bail in the ground case and though it is the submission of the learned Additional Advocate General that on the basis of the application filed by the detenu, such an order came to be passed, in the considered opinion of this Court, the said submission is liable to be rejected, for the reason that even without filing of an application for statutory bail, obligation is cast upon the jurisdictional Magistrate Court enabling the detenu in getting the statutory bail and therefore, the filing of the application by the detenu to get a statutory bail cannot be put against him. As rightly pointed out by the learned counsel for the petitioner, in paragraph No.4, though it is stated that the co-accused was enlarged on bail vide order dated 25.09.2015, in CMP.No.6837 of 2015, in the absence of any materials to show that attempts are being made to file an application for bail in the adverse case, the subjective satisfaction derived by the Detaining Authority in this regard is vitiated and therefore, the impugned order of detention is liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the third respondent herein, namely, The Commissioner of Police, City, Tiruchirappalli, in C.No.01/NSA/Detention/CPO/TC/2018, dated 19.07.2018. Consequently, the detenu, namely, Krishna Murari Tiwari, S/o.Gauri Sankar, aged



about 27 years, who is now detained at Central Prison, Coimbatore is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

- 1.The Secretary to Government of India,  
Ministry of Home Affairs,  
Department of Internal Security,  
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New Delhi - 110 001.
- 2.The Principal Secretary to Government,  
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Secretariat,  
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- 3.The Commissioner of Police,  
Tiruchirappalli City,  
Tiruchirappalli.
- 4.The Superintendent of Prison,  
Central Prison,  
Coimbatore.
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
6. The Joint Secretary to Govt.  
Public (Law and Order)  
Fort St.George, Chennai

+2cc to Mr.M.Chellapandian, Advocate, SR.No.71683

gk/dsk

H.C.P (MD) No.1165 of 2018

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