



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.SUBBIAH

AND

THE HON'BLE Mr. JUSTICE B.PUGALENDHI

H.C.P. (MD) Nos.1554, 1555 and 1560 of 2018

H.C.P. (MD) No.1554 of 2018:

N.Mathina

... Petitioner

Vs.

1.State Rep.by

The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector / District Magistrate,
Tirunelveli District,
Tirunelveli.

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

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in M.H.S.Confdl.No.126/2018 dated 13.10.2018 and to direct the respondents herein to produce the detenu namely, Musthafa Kamal @ Kamal, son of Beer Mohammed, aged 27 years, who has been termed as Goonda and now confined in Central Prison, Palayamkottai and set aside the same and set the detenu at liberty.

H.C.P. (MD) No.1555 of 2018:

N.Ramla Beevi

... Petitioner

Vs.

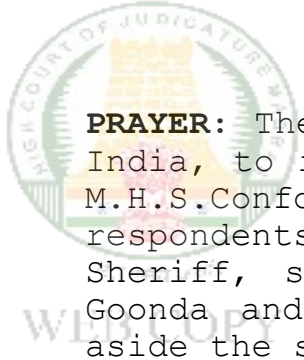
1.State Rep.by

The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector / District Magistrate,
Tirunelveli District, Tirunelveli.

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

... Respondents



PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in M.H.S.Confdl.No.125/2018 dated 13.10.2018 and to direct the respondents herein to produce the detenu namely, Aji @ Hajmeer Kaja Sheriff, son of Noorden, aged 27 years, who has been termed as Goonda and now confined in Central Prison, Palayamkottai and set aside the same and set the detenu at liberty.

H.C.P. (MD) No.1560 of 2018:

N.Mahumudai

... Petitioner

Vs.

1.State Rep.by

The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Collector / District Magistrate,
Tirunelveli District,
Tirunelveli.

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

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in M.H.S.Confdl.No.127/2018 dated 13.10.2018 and to direct the respondents herein to produce the detenu namely, Kadharmydeen @ Shabeer, son of Mohamed Ismayel, aged 27 years, who has been termed as Goonda and now confined in Central Prison, Palayamkottai and set aside the same and set the detenu at liberty.

For Petitioners : Mr.G.Thalaimutharasu

For Respondents : Mr.V.Neelakandan, APP

COMMON ORDER

(Order of the Court was made by R.SUBBIAH,J.)

The detenus have been detained by the second respondent by order in M.H.S.Confdl.Nos.126, 125 and 127 of 2018 dated 13.10.2018 holding them to be a Goonda as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said orders are under challenge in these Habeas Corpus petitions.

<https://hcservices.ecourts.gov.in/hcservices/> 2. We have heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondents.



3.The learned counsel for the petitioners submitted that though five previous theft cases in Confld.No.126/2018, seven previous cases in Confld.No.125/2018 and another seven previous cases in Confld.No.127/2018 have been mentioned in the orders of detention, a solitary instances ie., the detenus have indulged in robbery, mentioned in the grounds of detention is not of such magnitude and intensity as to have the effect of disturbing the public order so as to pass an order under Section 3(1) of the Act. In support of his contention, the learned counsel for the petitioners has relied on a decision reported in **2003 SCC (Cri.) 537 (Darpan Kumar Sharma Vs. State of T.N. and others)**, wherein, the Hon'ble Supreme Court has held as follows:

"6.In the present case, the three alleged incidents to which the Commissioner of Police has referred to are thefts arising under Section 379 and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner, prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents."

4.The said judgment is squarely applicable to the facts of the present cases. Therefore, the orders of detention are liable to be set aside.

5.In the result, the Habeas Corpus petitions are allowed and the detention orders passed by the second respondent in his proceedings in M.H.S.Confdl.Nos.126, 125 and 127/2018 dated 13.10.2018 is quashed. The detenu, namely, Musthafa Kamal @ Kamal, aged 27 years, son of Beer Mohammed, in M.H.S.Confdl.Nos.126/2018 dated 13.10.2018, the detenu namely, Aji @ Hajmeer Kaja Sheriff, aged 27 years, son of Noorden and the detenu namely, Kadharmydeen @ Shabeer, aged 27 years son of Mohamed Ismayel are ordered to be set



at liberty forthwith, if their detention is not required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

/ True Copy /

Sub Assistant Registrar (CS)

To

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

+1CC to M/s.G.THALAIMUTHARASU, Advocate (SR-44260, 44258, 44259)

H.C.P. (MD) Nos.1554, 1555 and 1560 of 2018
01.02.2019

ES/29.03.2019/4P/7C