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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD) No.1763 of 2018

Vijay

... Petitioner

Vs.

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

2.The District Collector and
District Magistrate,
Kanyakumari District,
Nagercoil.

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

... Respondents

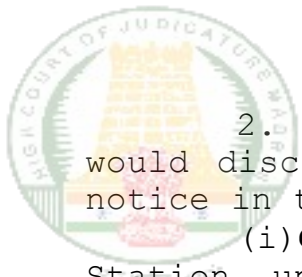
Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in P.D.No.66/2018, dated 07.12.2018, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Vijay, aged about 33 years, S/o Thulasi, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

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

ORDER

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

The detenu himself is the petitioner and challenging the impugned order of detention dated 07.12.2018, passed by the second respondent, under Section 2(f) 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 P.D.No.66/2016, he has filed the present Habeas Corpus Petition.



2. A perusal of the grounds of detention dated 07.12.2018 would disclose among other things that the detenu came to adverse notice in the following three cases:

(i) **Cr.No.31 of 2016** on the file of Rajakkamangalam Police Station, under Sections 147, 148, 447, 294(b) and 506(ii) I.P.C.

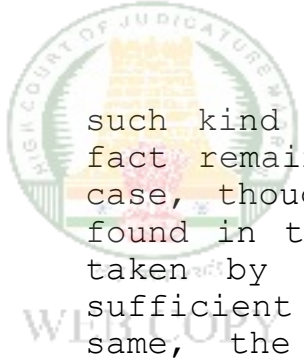
(ii) **Cr.No.2 of 2017** on the file of Rajakkamangalam Police Station, under Sections 452, 294(b), 307, 324, 506(ii) r/w 149 I.P.C.

(iii) **Cr.No.47 of 2017** on the file of Rajakkamangalam Police Station, under Sections 147, 148, 294(b), 307 and 506(ii) I.P.C. and Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 @ Sections 147, 148, 294(b), 307, 506(ii) I.P.C. and Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 r/w 149 I.P.C.

3. It is further stated in the grounds of detention that on 13.11.2018, the defacto complainant viz., Ananth, S/o.Chellanadar, a resident of Poochikadu, Ganapathypuram Post, lodged a complaint on the file of the Rajakkamangalam Police Station stating among other things that the detenu came near him and waylaid him and threatened him to give money and when he refused, the detenu took lethal weapon which was kept in his back and threatened the defacto complainant with dire consequences and fearing for his life and body, he gave a sum of Rs.300/- which was kept in his pocket and he raised an alarm and when the public gathered thereby, the detenu threatened them with lethal weapon and ran away from the scene of occurrence. Rajakkamangalam Police Station, based on the complaint given by the defacto complainant, registered a case in Cr.No.231 of 2018, for the commission of offences under Sections 341, 294(b), 387, 506(ii) I.P.C. and Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The detenu was arrested on 13.11.2018 and produced before the Court of Judicial Magistrate No.I, Nagercoil and on the same day, he was remanded to judicial custody and his remand period was extended till 19.12.2018.

4. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

5. The learned Counsel appearing for the petitioner would submit that the detenu is in custody in connection with the second and third adverse cases and ground cases and he filed an application for bail in third adverse case in CrI.M.P.No.4362 of 2018 and it came to be dismissed on 20.11.2018 by the Court of Principal Sessions Judge, Kanyakumari District at Nagercoil and that apart, in respect of the ground case, he has filed an application for bail in CrI.M.P.No.4363 of 2018 and the same was dismissed on 20.11.2018. The primordial submission made by the learned Counsel appearing for the petitioner is that though the detaining authority has observed by placing reliance upon the bail granted in similar case, in no



such kind of similar case, bail was granted by the Court and the fact remains that the order dismissing the bail in third adverse case, though finds place in the booklet, no specific averment was found in the grounds of detention and that apart, as to the steps taken by the detenu to come out on bail and no copy of the sufficient material has also been produced and in the absence of the same, the subjective satisfaction arrived at by the detaining authority is vitiated and hence, prays for quashment of the impugned order of detention.

6. Per contra, the learned Additional Public Prosecutor appearing for the State has drawn the attention of this Court to the counter affidavit filed by the second respondent and would submit that the detaining authority, on proper application of mind, has taken into consideration all the materials and the report submitted by the sponsoring authority, has passed the detention order and hence, prays of dismissal of the Habeas Corpus Petition.

7. This Court has considered the rival submissions and perused the materials placed before this Court.

8. As rightly pointed by the learned Counsel appearing for the petitioner, the dismissal of the bail application in the third adverse case though was available in page No.147 of the booklet, there is no averment in the grounds of detention to that effect and that apart, the application for bail in connection with ground case was also dismissed and as to the taking steps on behalf of the detenu to file another application for bail, no copy of the bail application or sufficient materials have also been produced. In the considered opinion, the above said laches exhibit the non-application of mind on the part of the detaining authority and they are fatal to the impugned order of detention and therefore, warrants interference.

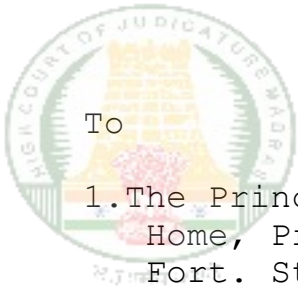
9. In the result, this Habeas Corpus Petition is allowed and the order of detention in P.D.No.66/2018, dated 07.12.2018 passed by the second respondent, is quashed and the detenu namely Vijay, S/o Thulasi is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)



To

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai-9.

2.The District Collector and
District Magistrate,
Kanniyakumari District.

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

4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai.

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

H.C.P(MD)No.1763 of 2018
06.06.2019

CS: (18/06/2019) 4P 6C