



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.1765 of 2018

Jeyan

.. Petitioner

Vs.

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

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

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

.. Respondents

PRAYER:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to to call for the entire records connected with the detention order passed in P.D.No.67 of 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 Jeyan, aged about 30 years, S/o, Raju @ Darsigh, 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

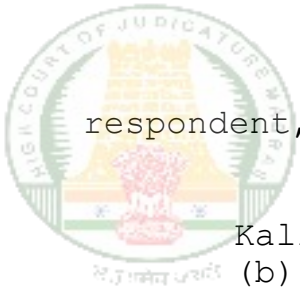
Additional Public Prosecutor

ORDER

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

The petitioner himself is the detenu and challenge is made to the order of detention dated 07.12.2018 passed by the second respondent, under which, the detenu has been branded as "Goonda" and detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, 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 of 1982).

2. As per the grounds of detention passed by the second



respondent, the detenu came to adverse notice in the following case:

"Crime No.154 of 2018 on the file of Kaliyakkavilai Police Station under Sections 341, 294(b) and 307 IPC."

WEB COPY

3. The grounds of detention further read that on 19.11.2018 one Jones @ Edwin Raj has lodged a complaint on the file of the Kaliyakkavilai Police Station stating that when he was going in the motor cycle of his brother as a pillion rider and when they came near Dhoni hotel, they were waylaid by the detenu and the detenu has abused the defacto complainant by using filthy language and also assaulted him, on account of which, the defacto complainant sustained injuries. In the said incident, the motor cycle also got damaged. The public, who were come to rescue the defacto complainant were also threatened with dire consequences. Based on the complaint given by the defacto complainant, a case in Crime No.239 of 2018 under Sections 341, 294(b). 324, 307 and 506(ii) IPC and Section 3(i) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 was registered on the file of Kaliyakkavilai Police Station. The detenu was arrested on 20.11.2019 and produced before the learned Judicial Magistrate No.I, Kuzhithurai and was remanded to Judicial custody till 30.11.2018. The remand period was extended till 14.12.2018

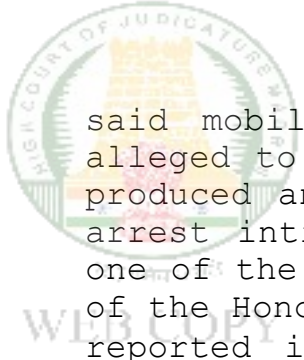
4. The detaining authority being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention.

5. The learned counsel for the petitioner would submit that in connection with the ground case, the detenu was arrested and arrest intimation was given to his brother, namely, Jegan through SMS through Mobile No.7598256788 and for having sent arrest intimation to the brother of the detenu through SMS, no material whatsoever has been produced and it is obligatory on the part of the detaining authority, to furnish the text of the SMS message and in the absence of the same, the order of detention is vitiated and prays for quashment of the same.

6. Per contra, the learned Additional Public Prosecutor by drawing attention of this Court to the counter affidavit filed by the second respondent would submit that the detention order is passed on proper application of mind to the entire materials and prays for dismissal of this petition.

7. The Court carefully considered the rival submissions made on either side and perused the records.

8. Perusal of page No.175 of the booklet would disclose that the arrest intimation of the detenu in connection with the ground case was sent to the brother of the detenu through SMS through the



said mobile number. Admittedly, copy of the said text message alleged to have been sent to the father of the detenu has not been produced and in the absence of the same, it cannot be stated that arrest intimation was given to the father of the detenu, which is one of the basic principles to be complied with as per the decision of the Honourable Supreme Court in ***D.K.Basu Vs. State of West Bengal*** reported in ***AIR (1997) SC 610***. Hence, on that sole ground, the impugned order is liable to be quashed.

9. Accordingly, the habeas corpus petition is allowed and the impugned order of detention in P.D.No.67 of 2018 dated 07.12.2018 passed by the second respondent is quashed. The detenu, Jeyan, son of Raju @ Darsingh, is directed to be set at liberty forthwith, unless his detention / remand is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Kanniyakumari District, Nagercoil.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.(In duplicate for communication to the Detenue)
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George, Chennai-09.

H.C.P(MD)No.1765 of 2018
03.06.2019