



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.1577 of 2018

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M.Panchavarnam

... Petitioner

Vs.

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

2.The Commissioner of Police,
Madurai City,
Madurai.

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in pursuant to the proceedings of the second respondent in Detention Order in Cr.M.P.No.51/BCDFGISSSV/2018, dated 10.10.2018, quash the same and consequently direct the respondents to produce the detenu, namely Kaleeswaran @ Kudil Kali, S/o Muthusamy, aged 23 years, who is now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.M.Chandrabose

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

* * * * *

ORDER

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

The petitioner is the mother of the detenu and challenging the impugned order of detention dated 10.10.2018, passed by the second respondent, under Section 3(1) 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 branded him as 'Goonda' in Cr.M.P.No.51/BCDFGISSSV/2018, has filed the present Habeas Corpus Petition.

2. A perusal of the grounds of detention dated 10.10.2018 would disclose among other things that the detenu came to adverse notice in the following three cases:

(i) **Cr.No.85 of 2018** on the file of V2 Avaniyapuram

Police Station, under Sections 147, 148,

<https://hcservices.ecourts.gov.in/hcservices/>

294(b), 324, 307 I.P.C. altered into Sections 147, 148, 294

(b), 323, 324 and 302 I.P.C.



(ii) **Cr.No.395 of 2018** on the file of B4 Keeraithurai Police Station, under Sections 147, 148, 294(b), 342, 324, 307 and 506(ii) I.P.C.

(iii) **Cr.No.963 of 2018** on the file of V2 Avaniyapuram Police Station, under Sections 147, 148, 341, 294(b), 307, 506 (ii) I.P.C.

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3. It is further stated in the grounds of detention that the defacto complainant viz., Vijayabharathi, W/o Velkumar, is a resident of Vazhaithope, Madurai and on a particular day, the rivals/enemies of her husband came to her house with deadly weapons and enquired about her husband and threatened her to tell her husband to keep quiet otherwise his death would be in their hands and left from there. On 04.06.2018, the defacto complainant and her husband were moving near Banumathi tea shop, located near their residence and at that time, the said persons came there, armed with deadly weapons, waylaid her husband and attacked him with deadly weapons and caused grievous and multiple injuries. When the defacto complainant raised an alarm and the persons present there came for help, they threatened the de facto complainant with dire consequences and left the place. The husband of the defacto complainant, on account of grievous multiple injuries sustained, lost his breathe.

4. The Sub Inspector of Police, B4 Keeraithurai Police Station, on the basis of the complaint given by the defacto complainant, has registered a case in Cr.No.396 of 2018, for the commission of offences under Sections 147, 148, 341, 294(b), 302 and 506(ii) I.P.C. Some of the accused were arrested and their confession revealed the role played by the detenu and the detenu was arrested on 08.06.2018 and subsequently, he was produced before the Court of Judicial Magistrate No.IV, Madurai and remanded to judicial custody on that day and his remand period was extended till 12.10.2018.

5. 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.

6. The learned Counsel appearing for the petitioner would draw the attention of this Court to the grounds of detention and would submit that the detenu was already granted conditional statutory bail in two adverse cases and he was already granted bail in the ground case, however, he did not produce any surety and still he is under remand and so far as the third adverse case is concerned, his bail application is pending. The detaining authority has erroneously recorded as if in the second adverse case, bail was granted by the learned Principal Sessions Judge, Madurai. Though the said fact nowhere finds place in the affidavit filed by the sponsoring authority before the detaining authority and since it was



a vital mistake in respect of relied upon document, the same would exhibit the non-application of mind on the part of the detaining authority and hence, prays for quashment of the order of detention.

7. Per contra, the learned Additional Public Prosecutor has drawn the attention of the 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.

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

9. A perusal of paragraph 5 of the grounds of detention would disclose that the detaining authority has recorded the fact that bail was granted by the learned Principal Sessions Judge, Madurai in the second adverse case, whereas statutory bail was granted by the jurisdictional Magistrate.

10. A perusal of the affidavit filed by the sponsoring authority would also disclose that the sponsoring authority, after narrating the facts, has produced the files for consideration of the detaining authority to pass the order of detention and the detaining authority is supposed to have passed the order of detention, after going through the entire materials placed before him.

11. As pointed out by the learned Counsel appearing for the petitioner, the detaining authority has committed a grave error, despite the fact that he has relied upon the document viz., the order of granting statutory bail in the second adverse case by the jurisdictional Magistrate. The said mistake committed by the detaining authority is a vital one in the considered opinion of this Court and the same would vitiate the order of detention and on that sole ground, the impugned order of detention warrants interference.

12. In the result, this Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.51/BCDFGISSSV/2018, dated 10.10.2018 passed by the second respondent, is quashed and the detenu namely Kaleeswaran @ Kudil Kali, S/o Muthusamy, 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 (CS-II)

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To

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

2.The Commissioner of Police,
Madurai City,
Madurai.

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

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