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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2019**

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P.(MD)No.1616 of 2018

Pulikutty : Petitioner

Vs.

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

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.

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

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the respondent No.2 in Detention Order No.93/2018 dated 28.10.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Pulikutty, son of Pandi, aged about 22 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

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ORDER

B.PUGALENDHI,J

The petitioner is the detenu viz., Pulikutty, S/o.Pandi, aged about 22 years. The detenu has been detained, as per the order of the second respondent, dated 28.10.2018, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petititoner is before this Court in this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

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3. In Paragraph No.5 of the detention order, it is stated as follows:

> "I am aware that the accused Pulikutty is in remand at Central Prison, Madurai, in connection with 1) Ammaiyanaickenur Police Station Cr.No.173/2018 u/s.302 IPC 2) Ammaiyanaickenur Police Station Cr.No.237/2018 u/s.392, 397, 506(ii) IPC. In connection with 1) Ammaiyanaickenur Police Station Cr.No.173/2018 u/s.302 IPC, accused Pulikutty filed bail petition before the Court of Judicial Magistrate, Nilakottai vide Cr.M.P.No.6066/2018 and the same was dismissed on 26.10.2018. 2) In connection with Ammaiyanaickenur Police Station Cr.No.237/2018 u/s.392, 397, 506(ii) IPC, accused Pulikutty filed bail petition before the Court of Judicial Magistrate, Nilakottai vide Cr.M.P.No.6065/2018 and the same was dismissed on 26.10.2018. In similar cases I.e, (1) Cr.No.155/2014 u/s.302 IPC of Palani Taluk Police Station, which is unrelated to the accused Pulikutty, the Court of District Principal and Sessions Judge, Dindigul was pleased to grant bail to an accused namely, Gurusamy vide Cr.M.P.No.1426/014 on 01.11.2014. (2) In another similar case ie., Cr.No.57/2015 u/s.302, 397, 506(ii) IPC of Palani Taluk Police Station, which unrelated to the accused Pulikutty, the Court of Judicial Magistrate, Palani, was pleased to grant bail for an accused namely, Raevan vide Cr.M.P.No.3237/2015 on 20.04.2015. Hence, I infer that there is a real possibility of his (Pulikutty) coming out on bail by filing bail petition before the same or higher Court. If he comes out on bail by filing bail petition before the same or higher Court, he will indulge in such further activities which will be prejudicial to the maintenance of public Order. Further, the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Pulikutty is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of Public Order under the provisions of the Tamil Nadu Act 14 of 1982."

4. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner, by inviting the attention of this Court to paragraph No.5 of the grounds of detention, submitted that the Detaining Authority, while arriving at a subjective satisfaction as to the imminent possibility of the detenu coming out on bail in the above said case, has observed that the detenu has filed a bail

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application in the ground case and the same was dismissed and has relied upon the bail granted to the accused Raevan in Cr.M.P.No.3237/2015 dated 20.04.2015 and that there is a real possibility of the detenue coming out on bail. However, the learned counsel for the petitioner submitted that the order granting bail to one Raevan is under Section 167(2) Cr.P.C., which has been taken into by the detaining authority as that of the similar case, and hence, it shows the non application of mind on the part of the detaining authority, which vitiates the order of detention.

5. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

6. We have considered the submissions made by the learned counsel for the petitioner and the learned Additional Public Prosecutor for the State and perused the grounds of the detention order and connected materials. Upon perusing the grounds of detention, especially Paragraph No.5, we see force in the contention of the learned counsel for the petitioner that though the Detaining Authority, while arriving at a subjective satisfaction, has observed that the granting of bail to one Raevan in Cr.M.P. No.3237/2015 dated 20.04.2015, which is said to be similar in nature to that of the ground case, in the said case, bail was granted under Section 167(2) Cr.P.C., which has been taken into account as that of the similar case, which shows the non application of mind on the part of the detaining authority. Therefore, on that score alone, the order of detention is liable to be set aside.

7. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order No.93/2018 dated 28.10.2018, is quashed. The detenu, namely Pulikutty, S/o.Pandi, aged about 22 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS)

RR

To

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

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.

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

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.

Order made in
H.C.P.(MD)No.1616 of 2018
Dated: 26.04.2019

ES/15.05.2019/4P/6C

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