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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1833 of 2018

Selvam

... Petitioner

Vs.

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

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

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

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of respondent No.2 in No.60/BCDFGISSSV/2018 dated 18.12.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Abdulkani, son of Sherief, aged about 26 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu and challenging the impugned order of detention dated 18.12.2018 passed by the second respondent, in and by which, the detenu has been branded as a Goonda under the provisions of Section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, 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 14/1982), she has filed the present habeas corpus petition.



2. A perusal of the Grounds of Detention dated 18.12.2018, passed by the second respondent herein, the detenu, viz., Abdulkani came to the adverse notice in the following four cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	D1 Tallakulam (Crime) Police Station Cr.No.424 of 2018	379 IPC altered into 392 IPC
2.	D1 Tallakulam (Crime) Police Station Cr.No.782 of 2018	379 IPC altered into 392 IPC
3.	D1 Tallakulam (Crime) Police Station Cr.No.1020 of 2018	379 IPC altered into 392 IPC
4.	D1 Tallakulam (Crime) Police Station Cr.No.1135 of 2018	379 IPC altered into 392 IPC

It is further stated in the grounds of detention that the defacto complainant, namely, Rajuthevar, S/o.Virumandi Thevar, residing at Guruvammal Compound, East Vaithiyanathapuram, Konnavayan Salai, Madurai, is doing a business in firewood and on 31.10.2018, at about 08.00 hours, when he was going near P.T.Rajan Road, with a sum of Rs.3,000/-, the detenu and three others waylaid and asked him to part with the money and when he raised an alarm, they snatched the sum of Rs.3,000/- from him. When the persons nearby came to rescue, they were threatened by the assailants with dire consequences and taking advantage of the situation, the detenu and his associates fled away from the scene of occurrence. D1 Tallakulam (Crime) Police Station, based on the complaint received from the defacto complainant, registered a case in Crime No.2170 of 2018 for the commission of offence under Sections 392 r/w 397, 506(ii) IPC (ground case). The detenu and three other associates were arrested on 31.10.2018 and they were enquired and subsequently, produced before the Court of Judicial Magistrate No.II, Madurai, on 01.11.2018 and were ordered to be remanded to judicial custody till 29.11.2018. In respect of the ground case, the detenu was enlarged on bail vide order dated 29.11.2018 by the Principal Sessions Court, Madurai, in CrI.M.P.No.5870 of 2018. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of the public peace and order and as such, branded him as a Goonda and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

3. The learned counsel for the petitioner would submit that the detenu was arrested in connection with all the four adverse cases and he has been granted bail in respect of the ground case. With regard to the subjective satisfaction of the detaining authority that if the detenu comes out on bail, he will indulge in



further activities which will be prejudicial to the maintenance of public order, the learned counsel placed reliance upon the order granting bail to the co-accused, one Manikandan in Cr.M.P.No.1328 of 2018 dated 02.05.2018. It is further submitted by the learned counsel for the petitioner that the order granting bail in the above said case cannot be considered as a similar one for the reason that the concerned petitioner / accused therein did not have any antecedents, whereas, the detenu in the present case on hand, according to the impugned order of detention, is having four adverse cases and as such, the possibility of getting bail is very remote and the said aspect has been completely overlooked by the detaining authority and hence, prays for quashment of the impugned order of detention.

4.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State by drawing the attention of this Court to the averments made in the counter affidavit would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. A perusal of the order granting bail to the detenu in respect of the ground case, at page no.351 of the booklet, would disclose that the prosecution has represented that the detenu is not having any antecedents, whereas, factually it is otherwise, for the reason that as per the grounds of detention, he came to adverse notice in four previous cases of similar in nature. When this Court posed a specific question to the learned Additional Public Prosecutor as to how it was represented that the detenu was not having any antecedents in the bail application in CrI.M.P.No.5870 of 2018, despite he had antecedents, the learned Additional Public Prosecutor sought time to get instructions.

7. It is also to be noted at this juncture that despite the above fact, no steps have been taken to cancel the bail granted to the detenu in the ground case. Be that as it may, the similar order granting bail to the concerned accused cannot be considered as similar for the reason that the concerned accused was not having any antecedents, whereas, the detenu is having antecedents and as such, there is no real and imminent possibility of the detenu coming out on bail in the said case. Therefore, this Court is of the view that on this sole ground, the detention order, impugned herein, is liable to be quashed and the same is accordingly, quashed.

8. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, The Commissioner of Police, Madurai City, Madurai, IN No.60/BCH/GR/SSSV/2018 dated 18.12.2018. Consequently, the detenu, namely, Abdulkani, son of Sherief, aged about 26 years, who is now



detained at Central Prison, Madurai is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

9. Perusal of the materials placed before this Court would indicate that the Inspector of Police at the relevant point of time was one Mr.S.Shankar, S/o.Santhanam and it is represented by the learned Additional Public Prosecutor that he is presently stationed as Inspector of Police, Serious Crime Squad, Ground Floor, Office of the Superintendent of Police, Kanchipuram (Mobile No. 94981-82994). The said officer is directed to file an affidavit as to the said lapse pointed out by this Court in respect of the order dated 29.11.2018, in CrI.M.P.No.5870 of 2018, regarding Crime No.2170 of 2018, which is available at page no.351 of the booklet of papers. The affidavit of the Officer concerned shall reach this Court positively by 26.06.2019.

10. Post the matter on 26.06.2019.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. Mr.S.Shankar,
Inspector of Police,
Serious Crime Squad, Ground Floor,
Office of the Superintendent of Police,
Kanchipuram.
Ph.No.94981-82994



6. The Joint Secretary to Govt.,
Public(LAw & Order),
Fort St. George,
Chennai 9

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