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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.1675 of 2018

Mahesh Kumar @ Mohiya Mahesh
@ Mahesh @ Vinoth

... 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,
Kanyakumari 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 call for the entire records connected with the detention order passed in P.D.No.59/2018 dated 14.11.2018 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 Mahesh Kumar @ Mohiya Mahesh @ Mahesh @ Vinoth, aged about 26 years S/o Vijayakumar, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

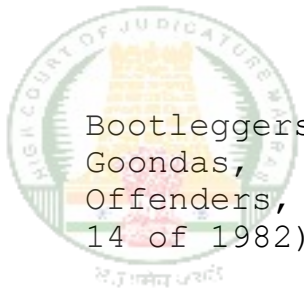
For Petitioner : Mr.N.Pragalathan

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 14.11.2018 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:

(i) Crime No.147 of 2015 on the file of Nesamony Nagar Police Station under Sections 147, 148, 294(b), 324 and 506(ii) IPC.

(ii) Crime No.86 of 2016 on the file of Nesamony Nagar Police Station under Sections 294(b), 324 and 506 (ii) IPC altered into Sections 294 (b), 323, 324 and 506 (ii) IPC altered into Sections 294(b), 323, 326 and 506 (ii) r/w 34 IPC.

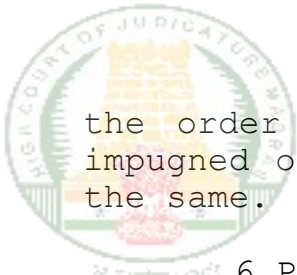
(iii) Crime No.91 of 2018 on the file of Nesamony Nagar Police Station under Sections 147, 148, 294(b), 307 and 506(ii) IPC altered into Sections 147, 148, 294 (b), 307 and 506 (ii) r/w 34 IPC.

(iii) Crime No.141 of 2018 on the file of Nesamony Nagar Police Station under Sections 294(b) 506 (i) IPC.

3. The grounds of detention further read that the defacto complainant, namely, Rajakumaran, resident of Pattagasaliyan Vilai, Kottar Post, Nagercoil was coming near the brandy shop and at that time, the detenu waylaid him and demanded Rs.200/-. When he refused, the defacto complainant was abused by the detenu in filthy language and also tried to attack him with aruval. The defacto complainant raised alarm and the public nearby gathered and they were also threatened with dire consequences. The detenu taking advantage of the situation fled away from the scene of occurrence. The detenu was arrested on 18.10.2018 and produced before the learned Judicial Magistrate No.II, Nagercoil on the same day and he was ordered to be remanded to judicial custody on 01.11.2018. The period of remand was extended till 15.11.2018.

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 has drawn the attention of this Court to page No.121 of the Booklet. The detenu is in custody in connection with the ground case and he did not file any bail application. No material whatsoever has been produced as to the attempts made on behalf of detenu for filing bail application in the ground case. Despite absence of the said materials, the detaining authority has placed reliance on the similar ground case in Crime No.186 of 2018 for the offence punishable under Sections 294(b), 387, 307 and 506(ii) IPC and the detaining authority clamped



the order of detention and in the absence of vital material the impugned order of detention is vitiated and prays for quashment of the same.

6. Per contra the learned Additional Public Prosecutor drawing the attention of this Court to the counter affidavit filed by the second respondent / detaining authority would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the orders of detention and prays for dismissal of this petition.

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

8. As rightly pointed out by the learned counsel for the petitioner, admittedly the detenu did not file any application for bail in the ground case and in the absence of vital material, the subjective satisfaction arrived at by the detaining authority that there is a real or imminent possibility of the detenu being enlarged on bail and if he is released on bail, he would indulge in such activities which would be prejudicial to the maintenance of public order, is vitiated and therefore, on that sole ground the impugned order of detention is liable to be quashed.

9. In the result, this Habeas Corpus Petition is allowed and the impugned order of detention in P.D.No.59/2018 dated 14.11.2018, passed by the second respondent is quashed. The detenu Mahesh Kumar @ Mohiya Mahesh @ Mahesh @ Vinoth, son of Vijayakumar, is directed to be set at liberty forthwith, unless his detention / remand is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar

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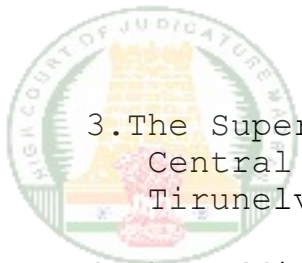
Sub Assistant Registrar(CS)

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,
Kanyakumari District,

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



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

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

H.C.P (MD) No.1675 of 2018
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