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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P. (MD) No.1664 of 2018

G.Malar

: 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.100/2018 dated 18.11.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Ganesan @ Naraimudi Ganesan, son of Alagar, aged about 44 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.S.Duraipandian

For Respondents : Mr.M.Chandrasekaran

Additional Public Prosecutor

ORDER

B. PUGALENDHI, J

The petitioner is the wife of the detenu viz., Ganesan @ Naraimudi Ganesan, S/o.Alagar, aged about 44 years. The detenu has been detained, as per the order of the second respondent, dated 18.11.2018, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petititioner is before this Court in this Habeas Corpus Petition.

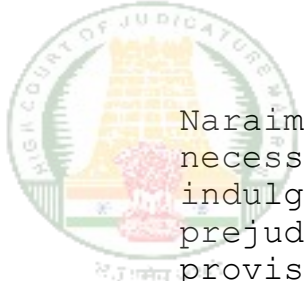
2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

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

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



"I am aware that the accused Ganesan @ Naraimudi Ganesan is in remand at Central Prison, Madurai, in connection with 1) Dindigul town south police station Cr.No.599/2018 u/s.397, 506(ii) IPC 2) Dindigul Town South Police Station Cr.No.600/2018 u/s.353, 506(ii) IPC r/w 25(1)(a) and 25(1-AA) Indian Arms Act 1959. In connection with 1) Dindigul Town Police Station Cr.No.599/2018 u/s.397, 506(ii) IPC, accused Ganesan @ Naraimudi Ganesan filed bail petition before the Court of Judicial Magistrate, No.III, Dindigul vide Cr.M.P.No.5379/2018 and the same was dismissed on 15.10.2018. Again he filed bail petition before the Court of District Principal and Sessions Judge, Dindigul vide Cr.M.P.No.2820/2018 and the same was also dismissed on 01.11.2018. Further, he filed bail petition before the Court of Hon'ble Madurai Bench of Madras High Court, Madurai in CrI.O.P.(MD) No.20355/2018 and the same is pending. 2) In connection with Dindigul Town South Police Station Cr.No.600/2018 u/s 353, 506(ii) IPC r/w 25 (a)(a) and 25(1-AA) Indian Arms Act, 1959, accused Ganesan @ Naraimudi Ganesan filed bail petition before the Court of Judicial Magistrate, No.III, Dindigul vide Cr.M.P.No.5380/2018 and the same was dismissed on 15.10.2018. Again he filed bail petition before the Court of District Principal and Sessions Judge, Dindigul vide Cr.M.P.No.2821/2018 and the same was also dismissed on 01.11.2018. Further, he filed bail petition before the Court of Hon'ble Madurai Bench of Madras High Court, Madurai in CrI.O.P.(MD) No.20370/2018 and the same is pending. In similar cases I.e, (1) Cr.No.57/2015 of Palani Taluk Police Station, which is unrelated to the accused Ganesan @ Naraimudi Ganesan, the Court of Judicial Magistrate, Palani was pleased to grant bail to an accused namely, Reaven vide Cr.M.P.No.3237/2015 on 20.04.2015. 2) Cr.No.766/2012 u/s 395 IPC r/w 397 IPC and 25(1-B)(a) of Arms Act of Dindigul town south police station, which is unrelated to the accused Ganesan @ Naraimudi Ganesan, the Court of Judicial Magistrate NO.III, Dindigul was pleased to grant bail to the accused namely, Dineshkumar vide Cr.M.P.No.1237/2017 and 1263/2017 on 05.04.2017. Hence, I infer that there is a real possibility of his (Ganesan @ Naraimudi Ganesan) 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 Ganesan @



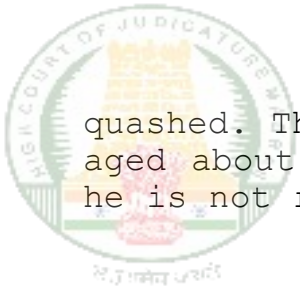
Naraimudi Ganesan is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of Public Order under the provisions of the Tamil Nadu Act 14 of 1982."

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 detenu was arrested in Crime No.599/2018 (adverse case) and Crime No.600/2018 (Ground case) on 09.10.2018 and that the Detaining Authority, while arriving at a subjective satisfaction as to the imminent possibility of the detenu coming out on bail in the ground case, has observed that the detenu has filed bail applications in the ground case and the adverse case and the same were dismissed on 01.11.2018 and that detenu has filed bail applications before this Court in Crl.O.P.(MD) Nos.20355 and 20370/2018 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 detenu 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 account 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 the bail applications in the adverse case in Crime No.599/2018 and ground case in Crime No.600/2018 were dismissed and thereafter, he has filed bail applications before this Court and the same are pending. While so, for arriving at a subjective satisfaction that the detenu is likely to be released on bail, the detaining authority has relied upon the bail order in Cr.M.P. No.3237/2015 dated 20.04.2015, passed by the Judicial Magistrate, Palani, in respect of one Raevan, which is said to be similar in nature to that of the ground case. However, 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.

6. 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.100/2018 dated 18.11.2018, is



quashed. The detenu, namely Ganesan @ Naraimudi Ganesan, S/o.Alagar, aged about 44 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

To

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

Order made in

H.C.P. (MD) No.1664 of 2018

Dated: 30.04.2019

RR

KK/SAR/20.05.2019/ 4P- 5C