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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.1669 of 2018

Karthick

... 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,
Tirunelveli District,
Tirunelveli.

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 M.H.S.Confdl No.133 of 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 Karthick, aged about 27 years S/o Muthuramalingam now detained at Central Prison, Palaymkottai 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 cases:

(i) Crime No.08 of 2014 on the file of Moontradaippu Police Station under Sections 392, 364(A) and 506(ii) IPC.

(ii) Crime No.72 of 2019 on the file of Eruvadi Police Station under Sections 147, 294(b), 323, 324, 506(ii) and 3(1)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(iii) Crime No.216 of 2018 on the file of Nanguneri Police Station under Sections 294(b), 353, 307 and 506(ii) and Sections 3 and 4 of Tamil Nadu Property (Prevention of Damage and Loss Act 1992.

(iv) Crime No.285 of 2018 on the file of Nanguneri Police Station under Sections 341, 294(b), 324, 307, 506(ii) IPC r/w Section 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 altered into Sections 120(b), 147, 148, 341, 294(b), 324, 307, 506(ii) IPC r/w Section 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

(v) Crime No.286 of 2018 on the file of Nanguneri Police Station under Sections 341, 294(b), 324, 307, 506(ii) IPC r/w Section 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 altered into Sections 120(b), 147, 148, 341, 294(b), 324, 307, 506(ii) IPC r/w Section 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

3.The grounds of detention further read that on 04.11.2018 at 22.55 hours, one Karthick and his associates trespassed into the compound of Nanguneri Police Station and threatened towards the Sentry Police and subsequently the detenu and his associates damaged the front glass of the Car bearing Registration No.TN-09-BL-3301, which was parked in the Police Station by pelting



stones. When the police party came, the detenu threatened them by brandishing Aruval and also scolded the police party in filthy language and thereby, prevented the public servant from discharging their duties. On the basis of the complaint given by the complainant, the Sub Inspector of Police, Nanguneri Police Station registered a case in crime No.323 of 2018 for the offence punishable under Sections 294(b), 353, 307, 506(ii) IPC r/w 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The detenu was arrested on 07.11.2018 and was produced before the learned Judicial Magistrate, Nanguneri and remanded to judicial custody on 20.11.2018.

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 would submit that in connection with the ground case, the detenu was arrested and arrest intimation was given to his mother, namely, Muthulakshmi through SMS through Mobile No.7708778192 and for having sent arrest intimation to the mother of the detenu through SMS, no material whatsoever has been produced and it is obligatory on the part of the detaining authority to furnish the text of the SMS message and in the absence of the same, the impugned order of detention is vitiated and prays for quashment of the same.

6. Per contra the learned Additional Public Prosecutor by drawing attention of this Court to the counter affidavit filed by the second respondent would submit that the detention order is passed on proper application of mind to the entire materials and prays for dismissal of this petition.

7. This Court has carefully considered the rival submissions on either side and perused the materials placed on records.

8. Perusal of page No.353 of the booklet would disclose that the arrest intimation of the detenu in connection with the ground case was sent to the mother of the detenu through SMS through the said mobile number. Admittedly, copy of the said text message alleged to have been sent to the mother of the detenu has not been furnished and in the absence of the same, it cannot be stated that arrest intimation was given to the mother of the detenu, which is one of the basic principles to be complied with as per the decision of the Honourable Supreme Court in **D.K.Basu Vs. State of West Bengal** reported in **AIR (1997) SC 610**. Hence, on that sole ground, the impugned order is liable to be quashed.

9. In the result, this Habeas Corpus Petition is allowed and the impugned order of detention in M.H.S.Confdl No.133 of 2018 dated 14.11.2018, passed by the second respondent is quashed. The detenu, Karthick, son of Muthuramalingam, is directed to be set at



liberty forthwith, unless his detention / remand is required in connection with any other case / proceedings.

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Sd/-

Assistant Registrar

// True Copy //

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,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government Public (law and Order)
First saint George, Chennai-9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No.1669 of 2018

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