



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2019

CORAM:

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

H.C.P(MD)No.1715 of 2018

Bhagavathi

... Petitioner

Vs.

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

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

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

... 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 records in pursuant to the proceedings of the second respondent in Detention Order in Cr.M.P.No.54/BCDFGISSSV/2018, dated 08.11.2018, quash the same and consequently direct the respondents to produce the detainee, namely Dhileepan @ Dhilipkumar, S/o Annadurai, aged 23 years, who is now detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.M.Chandrabose

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

**ORDER**

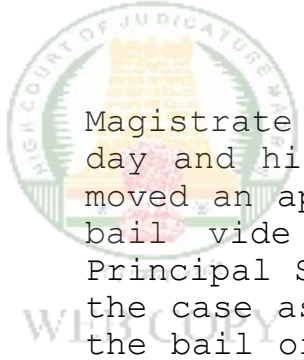
(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner is the mother of the detenu and challenging the legality of the impugned order of detention dated 08.11.2018 passed by the 2nd 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), came forward to file the present habeas corpus petition.

2.A perusal of the Grounds of Detention dated 08.11.2018, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Dhileepan @ Dhilipkumar came to the adverse notice in the following three cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	B4 Keeraithurai Police Station Cr.No.799 of 2017	147, 148, 294(b), 452, 341, 324, 307 and 506 (ii) I.P.C.
2.	B4 Keeraithurai Police Station Cr.No.395 of 2018	147, 148, 294(b), 342, 324, 307 and 506(ii) I.P.C.
3.	V2 Avaniyapuram Police Station Cr.No.963 of 2018	147, 148, 341, 294(b), 307 and 506(ii) I.P.C.

It is further stated in the grounds of detention that the defacto complainant viz., Vijayabharathi, W/o Velkumar, is a resident of Vazhaithope, Madurai lodged a complaint on the file of B4 Keeraithurai Police Station stating among other things that and on a particular day, the rivals/enemies of her husband came to her house with deadly weapons and enquired about her husband and threatened her to tell her husband to keep quiet otherwise his death would be in their hands and left from there. On 04.06.2018, the defacto complainant and her husband were moving near Banumathi tea shop, located near their residence and at that time, the said persons came there, armed with deadly weapons, waylaid her husband and attacked him with deadly weapons and caused grievous and multiple injuries. When the defacto complainant raised an alarm and the persons present there came for help, they threatened the de facto complainant with dire consequences and left the place. The husband of the defacto complainant, on account of grievous multiple injuries sustained, lost his breathe. The Sub Inspector of Police, B4 Keeraithurai Police Station, on the basis of the complaint given by the defacto complainant, has registered a case in Cr.No.396 of 2018, for the offences under Sections 147, 148, 341, 294(b), 302 and 506(ii) I.P.C. The detenu and some of his associates were arrested on 06.06.2018 and they were produced before the Court of Judicial



Magistrate No.IV, Madurai and remanded to judicial custody on that day and his remand period was extended till 08.11.2018. The detenu moved an application for bail in the ground case and he was granted bail vide dated 12.10.2018 in CrI.M.P.No.4679 of 2018 by the Principal Sessions Judge, Madurai. However, he is still in remand in the case as he has not produced the required sureties as ordered in the bail order. The detaining authority on 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 and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

3. The learned counsel for the petitioner would submit that admittedly the petitioner though was granted bail, the detenu was unable to produce the sureties and therefore he continued to remain in custody and also in connection with the third adverse case and in order to derive the subjective satisfaction that in the third adverse case there is imminent possibility of the detenu coming out on bail and will indulge in such activities, which are prejudicial to the maintenance of public order, the detaining authority has placed reliance upon the order granting bail in a similar case pertains to one Kali @ Kaleeswaran @ Kalam Kali in Cr.M.P.No.5331 of 2018 dated 03.10.2018 by the Court of Judicial Magistrate No.IV, Madurai and it cannot be a similar case for the reason that the petitioner therein got bail by invoking Section 167(2)(a)(i) Cr.P.C., whereas the detenu is not entitled to such bail and therefore, there was total non-application of mind on the part of the detaining authority as to the factual aspects. The learned counsel for the petitioner would further add that in respect of the co-detenu the detention order clamped by the detaining authority was challenged before this Court in H.C.P.(MD) No.1577 of 2018 and vide order dated 03.04.2015, it was quashed. Therefore, he prays for quashment of the impugned order of detention.

4.Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State 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 materials placed before it.

6.As rightly pointed out by the learned counsel for the petitioner the similar case cannot be stated as similar to the third adverse case for the reason that insofar as the similar case is concerned the concerned accused was released on bail by invoking Section 167(2)(a)(i) Cr.P.C. and in this case it is not so and as such there was non-application of mind on the part of the detaining authority in passing the detention order and as such the impugned order of detention is vitiated and is liable to be set aside.



7. 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 in No.54/BCDFGISSSV/2018 dated 08.11.2018. Consequently, the detenu, namely, Dhileepan @ Dhilipkumar, son of Annadurai, aged about 23 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.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

sj

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.
2. The Commissioner of Police,
Madurai City,
Madurai.
3. The Superintendent of Prison,
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.

H.C.P (MD) No.1715 of 2018

04.06.2019

ES/24.06.2019/4P/6C