



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 03.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD) NO. 1716 OF 2018

Muthu Irul

... Petitioner

- Vs -

1. The Secretary to the Government  
State of Tamil Nadu  
Home, Prohibition & Excise Dept.  
Secretariat, Chennai 600 009.

2. The District Collector & District Magistrate  
Office of the District Collector &  
District Magistrate, Madurai City  
Madurai.

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

Petition filed for the issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2<sup>nd</sup> respondent in BCDFGISSSV No.09/2018 dated 27.11.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Muthu Irul, S/o Kannan, aged about 25 years, now detained at Madurai Central Prison, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. R.Alagumani  
For Respondents : Mr.K.Dinesh Babu,  
Addl. Public Prosecutor

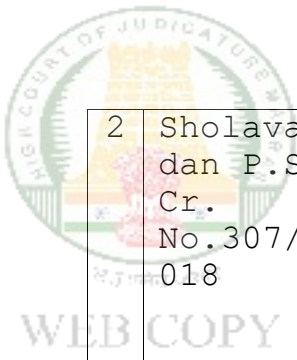
**ORDER**

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

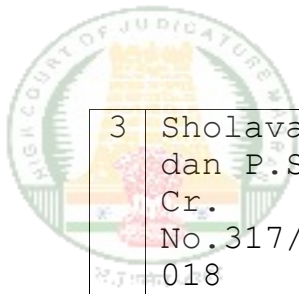
The detenu himself is the petitioner and challenge is made to the impugned order of detention dated 27.11.2018 passed by the 2<sup>nd</sup> respondent u/s 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as 'Goonda' with a view to preventing him from acting prejudicial to the interest of public health and public order. Aggrieved by the said order, the

2. As per the grounds of detention dated 30<sup>th</sup> Dec., 2011, the detenu came to adverse notice of the following cases :-

| S<br>.<br>N<br>o<br>. | Police<br>Station<br>& Crime<br>No.                                                 | Se<br>ct<br>io<br>n<br>of<br>La<br>w | Disposal/Present Stage                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------|-------------------------------------------------------------------------------------|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                     | Madurai<br>City C-<br>5,<br>Karimedu<br>Police<br>Station<br>Cr.<br>No.177/2<br>017 | 37<br>9<br>IP<br>C                   | The complainant Sudagar, S/o Arulanandam, resident of Door No.87, Sivanthipuram 14 <sup>th</sup> Street, Aathumedu, Virudhunagar District, now residing at Door No.7-A, Harvey Nagar, Madurai, came to Karimedu Police Station and lodged a complaint as follows. He owns a TATA INDIGO car bearing registration No.TN 67 BD 0338 and driving for rent in Friends Call Taxi, Madurai. On 14.3.2017 at 21.20 hours he was coming in front of a timber shop in Bye-pass road. At that time one Muthu Irul and his associate Sanmuganathan came in a two wheeler at his back side and parked the two wheeler near him. They picked Lava IRIS X8 cell phone and Rs.300/- from his shirt pocket, escaped and ran away. In this connection a case was registered in Madurai City Karimedu Police Station Cr. No.177/2017 u/s 379 IPC. On 15.03.2017, Karimedu Police Station police officials were checking vehicles near Vaigai river southern side road junction, Madurai Kamarajar bridge. At that time Muthu Irul came on that way and in a two wheeler bearing registration No.TN 58 AB 1532. On suspicious, police officials caught hold and enquired him. Muthu Irul told that he is going to meet his associate Sanmuganathan. He is going to sell the Lava IRIS X8 cell phone robbed from Sudagar by both of them. He spent the amount of Rs.300/- robbed from Sudagar by consuming liquor. He steals the two wheeler from Sagayamadha Kovil Street, Madurai City, in which he came. The accused Muthu Irul arrested and remanded under judicial custody. The accused Muthu Irul filed bail petition in Cr. M.P. No.779/2017 and he was granted bail by the Judicial Magistrate Court No.5, Madurai, on 03.04.2017. In this case, charge sheet was filed before the Judicial Magistrate Court No.5, Madurai, vide C.C. No.46/18. The case is pending trial before the court. |



|   |                                  |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---|----------------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | Sholavandan P.S. Cr. No.307/2018 | 39<br>2<br>IP<br>C | <p>The complainant Muthulakshmi, W/o Anbarasan residing at Alangkottaram, Sholavandan was going with her husband in front of K.S.Sabeena house situated near AG Church, Meenakshi Nagar in Sholavandan to Nagari road. At that time Muthu Irul and his associate Arvind @ Raja came in a two wheeler and snatched gold chain weighing 2 ½ sovereign from her neck and pushed her down and they escaped. In this connection a case was registered in Sholavandan Police Station Cr. No.307/18 u/s 392 IPC. In this case, the accused Muthu Irul was arrested on 23.10.18 at 18.15 hours, in Sholavandan Government Hospital. He was admitted as in-patient for further treatment in Madurai Government Rajaji Hospital in ward No.90B. As per the orders of Vadipatti Judicial Magistrate Court, the accused Muthu Irul was remanded under judicial custody in CONVICT ward No.111, Madurai Government Rajaji Hospital for 10 days from 24.10.18 and then the accused Muthu Irul was remanded at Dindigul Sub jail from 03.11.2018 under judicial custody. His remand was lastly extended till 30.11.2018. He has filed bail petition in Judicial Magistrate Court, Vadipatti, vide Cr. M.P. No.4002/2018 on 12.11.2018 and the same is pending in the Court. The case is under investigation.</p> |
|---|----------------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



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|    |          |                |                                                   |
|----|----------|----------------|---------------------------------------------------|
| 3  | Sholavan | 39             | In this cae, the complainant Natarajan, S/o       |
|    | dan P.S. | 2              | Gopalan, is residint at N.G.O. Colony, Salem      |
|    | Cr.      | @              | Road, Namakkal District. On 15.10.18, at 16.30    |
|    | No.317/2 | 39             | hours, he started in TARAS lorry bearing          |
|    | 018      | 7              | registration No.TN 48 F 4758 belonging to J.J.    |
|    |          | &              | Transport Company loading 480 Nos., of dhal bags  |
|    |          | 12             | from Salem Market Goodshed. On 16.10.18 at        |
|    |          | 0              | midnight he parked the lorry for nature call near |
|    |          | (b             | Jeyajothi Foods, Nagari in service road Dingidul  |
|    |          | )              | to Madurai Four way track and then he was         |
| IP |          | checking       | the lorry tyres. At that time the                 |
| C  |          | accused        | Muthu Irul and his associates Araving @           |
|    |          | Raja,          | Jeyasuriya @ Suriya, Muthukumar @ Karuppu,        |
|    |          | Adithyakarthik | @ Adhi, threatened the complainant                |
|    |          | with           | deadly weapons. They tied his hand and legs       |
|    |          | with           | clothes and pushed him in thorn and bush          |
|    |          | area           | and they drove the lorry. They went towards       |
|    |          | Trichy         | in four way track. They watched that              |
|    |          | police         | officials were checking vehicles near             |
|    |          | Aristo         | roundana, Trichy. They parked the lorry           |
|    |          | at             | road side and absconded. On knowing the           |
|    |          | information,   | the Inspector of Police, Sholavandan              |
|    |          | Police         | Station rescued the complainant. In this          |
|    |          | connection     | a case was registered in Sholavandan              |
|    |          | Police         | Station Cr. No.317/18 u/s 392 IPC @ 397,          |
|    |          | 120            | (b) IPC. The lorry was brought to the police      |
|    |          | station        | along with the load. In this case, the            |
|    |          | absconded      | accused Jeyasuriya @ Suriya was                   |
|    |          | arrested       | on 19.10.18 at Nagari. The accused                |
|    |          | Muthukumar     | @ Karuppu, Adhithyakarthik @ Adhi were            |
|    |          | arrested       | on 19.10.18 at Dindigul. The accused              |
|    |          | were           | remanded under judicial custody. In this          |
|    |          | case,          | the accused Muthu Irul was arrested on            |
|    |          | 23.10.18       | at 18.15 hours, in Sholavandan                    |
|    |          | Government     | Hospital. He was admitted as in-                  |
|    |          | patient        | for further treatment in Madurai                  |
|    |          | Government     | Rajaji Hospital in ward No.90B. As                |
|    |          | per            | the orders of Vadipatti Judicial Magistrate       |
|    |          | Court,         | the accused Muthu Irul was remanded under         |
|    |          | judicial       | custody in CONVICT ward No.111, Madurai           |
|    |          | Government     | Rajaji Hospital for 10 days from                  |
|    |          | 24.10.18       | and then the accused Muthu Irul was               |
|    |          | remanded       | at Dindigul Sub jail from 03.11.2018              |
|    |          | under          | judicial custody. His remand was lastly           |
|    |          | extended       | till 30.11.2018. The accused Muthu Irul           |
|    |          | has            | filed a bail petition in Vadipatti Judicial       |
|    |          | Magistrate     | Court vide Cr. MP No.4005/2018 dated              |
|    |          | 12.11.2018     | and the same was dismissed by Court on            |
|    |          | 13.11.2018.    | The accused Muthu Irul has filed                  |
|    |          | another        | bail petition in Principal District and           |
|    |          | Sessions       | Court vide Cr. M.P. No.5757/2018 dated            |
|    |          | 20.11.2018     | and the same is pending in the Court.             |
|    |          | The            | case is under investigation.                      |



3. It is further stated in the grounds of detention that the defacto complainant Karnan, S/o Ayyanar is a resident of Alangkottaram, Sholavandan, has lodged a complaint on the file of the Sholavandan Police Station alleging among other things that he and his friend Malaiyandi were returning to Alangkottaram from Sholavandan and when they were coming near 7<sup>th</sup> Day Church, the detenu dashed against the complainant's two wheeler and the complainant fell down. The detenu brandished a sword and put the same on his neck and threatened to kill him and in that process, asked the complainant to part with the money and also took a sum of Rs.1,500/- from his shirt pocket and also snatched the wrist watch. The defacto complainant raised an alarm and few persons came there and the detenu, threatening them also, and fled from the scene of occurrence during which time, he fell down and sustained injuries.

4. The Sholavandan police, on receipt of the complaint from the defacto complainant, registered a case in crime No.325/2018 for the offence u/s 392 r/w 397 IPC and 506 (ii) IPC (ground case). The detenu was arrested at about 18.15 hours on 23.10.2018 and was admitted as in-patient and, thereafter, shifted to Government Rajaji Hospital, for further treatment and, subsequently produced before the Court and as per the orders of the Judicial Magistrate, Vadipatti, remanded to judicial custody in Convict Ward No.111 for 10 days from 24.10.18 and, subsequently, remanded to judicial custody and lodged in sub-jail from 3.11.18. The remand was further extended upto 30.11.2018.

5. The 2<sup>nd</sup> respondent/Detaining Authority, on being satisfied that the above stated activities of the detenu are prejudicial to public order and peace, has clamped the impugned order of detention, challenging which the present habeas corpus petition has been filed.

6. Learned counsel appearing for the petitioner drew the attention of this Court to the grounds of detention and submitted that admittedly the detenu was in custody in connection with the 2<sup>nd</sup> and 3<sup>rd</sup> adverse cases as well as in the ground case and he filed application for bail in connection with the ground case in Cr. M.P. No.4003/2018 before the Judicial Magistrate, Vadipatti and the same was dismissed on 13.11.18 and the detenu filed yet another application before the Principal District and Sessions Court, Madurai in Cr. M.P. No.5253/18 and the same is pending. The primordial submission of the learned counsel for the petitioner is that though the detenu is also in judicial custody in connection with the 2<sup>nd</sup> and 3<sup>rd</sup> adverse cases, admittedly, he did not file any application for bail and even for the sake of argument the detenu is likely to come out on bail in the ground case, still he is in custody in connection with the 2<sup>nd</sup> and 3<sup>rd</sup> adverse cases and, therefore, there is no real and imminent possibility of the detenu coming out on bail causing detriment to the maintenance of public order and peace. However, the Detaining Authority has totally failed and neglected to take into consideration the arrest and



remand of the detenu in the 2<sup>nd</sup> and 3<sup>rd</sup> adverse cases and this exhibits total non-application of mind on the part of the detaining authority and, thereby, warranting quashment of the detention order.

7. Per contra, learned Addl. Public Prosecutor appearing for the respondents submits that the detaining authority, after due application of mind to the entire materials has arrived at the subjective satisfaction and clamped the order of detention and, therefore, submits that no interference is called for with the impugned order and prays for dismissal of this petition.

8. This Court has carefully considered the rival submissions and perused the materials available on record.

9. As rightly pointed out by the learned counsel for the petitioner, the detenu is in custody in connection with the 2<sup>nd</sup> and 3<sup>rd</sup> adverse cases and he did not file any application of bail, however, while arriving at the subjective satisfaction that there is likelihood of the detenu indulging in similar activities, which are prejudicial to the maintenance of public order and peace, the detaining authority did not take into consideration the arrest and incarceration of the detenu in connection with the 2<sup>nd</sup> and 3<sup>rd</sup> adverse cases and, therefore, non-consideration of the same would exhibit non-application of mind on the part of the detaining authority. This non-application of mind on the part of the detaining authority, in the considered opinion of this Court, vitiates the order of detention and warrants interference.

10. Accordingly, the habeas corpus petition is allowed and the impugned order of detention passed by the 2<sup>nd</sup> respondent in BDFGISSSV No.09/2018 dated 27.11.2018 is set aside. The detenu Muthu Irul, S/o Kannan, is directed to be set at liberty forthwith unless his custody/detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS )

To

1. The Secretary to the Government  
State of Tamil Nadu  
Home, Prohibition & Excise Dept.  
Secretariat, Chennai 600 009.



2. The District Collector & District Magistrate  
Office of the District Collector &  
District Magistrate, Madurai City  
Madurai.

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

4. The Joint Secretary to Govt.,  
Public(Law&order),  
Fort st. geroge,  
Chennai 9

5. The Addl. Public Prosecutor  
Madurai Bench of Madras High Court  
Madurai.

+1.CC. To Mr. R.Alagumani, Advocate in SR No.66951

**H.C.P. (MD) NO. 1716 OF 2018**

**03.06.2019**

**gln**

MK (28.06.2019) 7P 7C