



WEB COPY

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.1712 of 2018

Pratheep

: Petitioner

Vs.

1.State of Tamil Nadu

Rep. By the Principal Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Collector and District Magistrate,
Kanniyakumari District
Nagercoil.

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

: 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 passed in P.D.No.62/2018 dated 23.11.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Pratheep, aged about 22 years, S/o.Kannan now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

For Respondents

: Mr.M.Chandrasekaran

Additional Public Prosecutor

ORDER

B. PUGALENDHI, J

The petitioner is the detenu viz., Pratheep, S/o.Kannan, aged about 22 years. The detenu has been detained, as per the order of the second respondent, dated 23.11.2018, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petitioner is before this Court in this Habeas Corpus Petition.



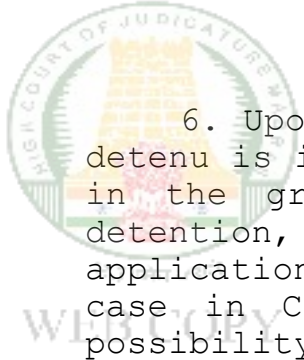
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

3. In paragraph No.4 of the grounds of detention, it is stated as follows:

"4. I am aware that the accused Thiru. Pratheep was arrested on 24.09.2018 at 12.45 hours near Railway Station Road, Sakthi Nagar and duly produced before the Judicial Magistrate No. II, Nagercoil on the same day at 11.55 p.m. and remanded upto 08.10.2018 and lodged in District Jail, Nagercoil as a remand prisoner. His remand period has been extended till 27.11.2018. Further I infer that the accused Thiru. Pratheep is under judicial custody in the ground case in Kottar P.S. Cr.No. 410/2018 u/s 341, 294(b), 387, 307, 506(ii) IPC and the previous in Kottar P.S. Cr.No. 409/2018 u/s 341, 302 IPC. So far no bail application has been filed on his behalf in any of the Court. As far as the ground case is concerned, in a similar case registered in Nesamony Nager Police Station in Cr.No. 91/2018 u/s 147, 148, 294(b), 307, 506(ii) IPC @ 147, 148, 294(b), 307, 506(ii) r/w 34 IPC, the accused Thiru. Subin was released on condition bail on 27.06.2018 as per the orders of the Court of District and Sessions, Kanyakumari District at Nagercoil issued in CrI.M.P.No. 2561/2018 dated 26.06.2018 (copy of the order is enclosed). Since bail is granted in such cases by the courts, the accused Thiru. Pratheep may file bail application in future in the lower court or higher court and there is a real possibility that he may come out on bail. If the accused Thiru. Pratheep comes out on bail, he will indulge in such activities, which would be prejudicial to the maintenance of public peace and public order. The recourse of normal criminal law would not give the desired effect of effectively preventing him from indulging in such activities."

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 submitted that the detaining authority, while arriving at a subjective satisfaction, has observed that the detenu has not filed any bail applications in the adverse case and also in the ground case. However, the detaining authority has observed that the detenu is likely to come out on bail in the said adverse and ground case and as such, there is non application of mind on the part of the detaining authority. Hence, on that ground, the detention order is liable to be set aside.

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. Upon perusing the grounds of detention, it is clear that the detenu is in remand in the adverse case in Crime No.409/2018 as well in the ground case in Crime No.410/2018. In the grounds of detention, it is stated that the detenu has not filed any bail applications in the adverse case in Crime No.409/2018 as well ground case in Crime No.410/2018. While that being so, the imminent possibility of coming out on bail by the detenu may not arise. Hence, there is non application of mind on the part of the detaining authority in arriving at a subjective satisfaction that the detenu is likely to come out on bail. Therefore, on that score alone, the order of detention is liable to be set aside.

7. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in P.D.No.62/2018 dated 23.11.2018 is quashed. The detenu, namely Pratheep, S/o.Kannan, aged about 22 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Crl.Side)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary to Government
Home, Prohibition and Excise Department,
State of Tamilnadu
Fort St. George, Chennai-9.
- 2.The District Collector and District Magistrate
Kanniyakumari District
Nagercoil.
- 3.The Superintendent of Prison
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St.GEorge,
Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.1712 of 2018

Dated: 30.04.2019

CS: 16/05/2019/3P/6C

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