



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.653 of 2019

Priyanga

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

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

... 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 entire records, connected with the detention order of respondent No.2 in Cr.M.P.No.23/2019 dated 17.06.2019 in detaining the detenu u/s 2(f) of the T.N.Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the body or person of the detenu by name Elavarasan @ Elankutty, son of Viswanathan, aged about 27 years, now detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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

O R D E R

(Order of the Court was made by **T.RAJA, J.**)

The wife of the detenu is the petitioner herein and challenging the impugned order of detention dated 17.06.2019 passed by the second respondent, branding her husband 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), she has filed the present habeas corpus petition.



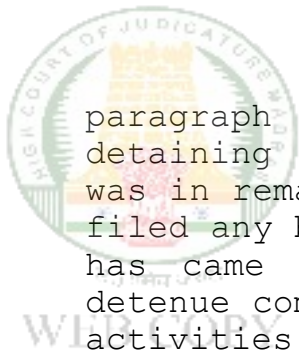
2. A perusal of the Grounds of Detention dated 17.06.2019, passed by the second respondent would show that the detainee came to the adverse notice in the following cases:

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1	Somarasampettai Police Station Cr.No.159 of 2016	294(b), 341, 324, 506(ii) IPC
2	Jeeyapuram Police Station Cr.No.122 of 2017	399 IPC
3	Somarasampettai Police Station Cr.No.126 of 2018	147, 148, 324, 307 IPC r/w 3(1) of TNP(PD&L) Act, 1992 @ 147, 148, 294(b), 324, 307 IPC, 3(1) TNP(PD&L) Act 1992 and 25(1-B) (a) of Arms Act, 1959

It is further stated in the grounds of detention that on 05.06.2019, when the defacto complainant was standing near his car in the car stand at Thogamalai, one Naveen Ananth @ Mandaiyan came there and engaged his car to admit his mother in the Government Hospital, Tiruchirappalli, for a sum of Rs.1500/-. While on travel, the said Naveen Ananth @ Mandaiyan informed the complainant to drive the vehicle to Adhavathurpalayam, so as to borrow money from his friend for the treatment. When they came near Sivananda Balalayam at Adhavathurpalayam, the said Naveen Ananth @ Mandaiyan instructed to stop the vehicle and suddenly, the detainee and three other persons, with deadly weapons, attacked the complainant and robbed the car as well as a sum of Rs.300/-. Based on the complaint lodged by the complainant, a case was registered in Crime No.106 of 2019 [ground case] on the file of the Somarasampetti Police Station, for the offence under Section 397 IPC.

3. The said Naveen Ananth @ Mandaiyan and his associates were arrested on 06.06.2019. Based on their confession, the detainee was arrested on 07.06.2019. All of them were produced before the Court of Judicial Magistrate No.5, Tiruchirappalli and were also ordered to be remanded to judicial custody. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detainee were prejudicial to the maintenance of the public peace and order and as such, branded him as a Goonda and detained him under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel for the petitioner, assailing the order of detention, would draw the attention of this Court to



paragraph no.5 of the detention order and would submit that the detaining authority himself has clearly admitted that the detainee was in remand in connection with the ground case and that he has not filed any bail application so far. While so, the detaining authority has come to the conclusion that there is a possibility of the detainee coming out on bail by filing bail application and indulge in activities which are prejudicial to the maintenance of public order and peace. But, no material, whatsoever, has been placed by the detaining authority that the detainee has attempted to file a bail application. In the absence of any such documents, the subjective satisfaction derived by the detaining authority is wholly vitiated and therefore, prays for allowing the present petition.

5. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State by drawing the attention of this Court to the averments made in the counter affidavit 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.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. As rightly pointed out by the learned Counsel for the petitioner, admittedly, the detainee is in custody in connection with the ground case, but, he did not file any bail application in the ground case. The detaining authority has merely stated that there is a possibility of the detainee coming out on bail, by filing bail application. But, to derive such a subjective satisfaction, no material or whatsoever has been placed on record. In the absence of any such positive material as to the attempts being made for filing bail applications, the impugned order of detention is vitiated, as such, it is liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, District Collector and District Magistrate, Tiruchirappalli District, Tiruchirappalli, in Cr.M.P.No.23/2019 dated 17.06.2019. Consequently, the detenu, namely, Elavarasan @ Elankutty, son of Viswanathan, aged about 27 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

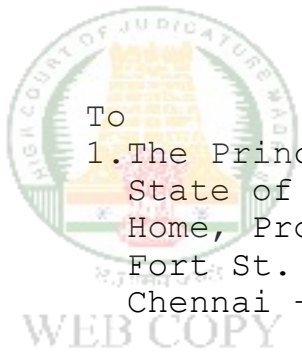
Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar(CS)



To

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SMA/24/01/2020/4P/5C