



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1767 of 2018

WEB COPY

P.Solaiyammal

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise IX,
Secretariat, George Fort,
Chennai - 600 009.

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

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

...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 on the file of the 2nd respondent in Detention Order No.59/BCDFGISSV/2018 and set-aside the order of detention passed therein dated 08.12.2018; direct the Respondents to produce the detenu by name Saba @ Sabarathinam son of Pandi, male aged 30 years before this Honourable Court, now detained at Central Prison, Coimbatore and set him at liberty forthwith.

For Petitioner

: Mr.J.William Christopher

For Respondents

: Mr.K.Dinesh Babu

Additional Public Prosecutor

O R D E R

(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 08.12.2018 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), she came forward to file the present habeas corpus petition.

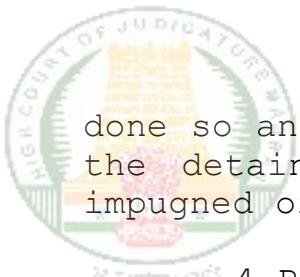


2. A perusal of the Grounds of Detention dated 08.12.2018, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Saba @ Sabarathinam came to the adverse notice in the following case:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	C3 S.S. Colony Police Station Cr.No.153 of 2018	147, 148, 392, 397, 294(b) and 506 (ii) IPC and 25(1)(a) Arms Acts 1959 altered into 120-B, 147, 148, 392 r/w 397, 294(b), 506(ii) and 212 IPC and 25(1)(a) Arms Acts 1959 and 34 IPC

It is further stated in the grounds of detention that based on the complaint lodged by the defacto complainant viz., Vijayabharathi, B4 Keeraithurai Police registered a case in Cr.No.396 of 2016, for the commission of offences under Sections 147, 148, 341, 294(b), 302 and 506(ii) I.P.C. (ground case). The detenu surrendered before the Judicial Magistrate No.4, Madurai and ordered to be remanded to judicial custody and he was taken to police custody on 27.09.2018 and thereafter, he was produced before the Court of Judicial Magistrate No.IV, Madurai on 28.09.2018 and again remanded to judicial custody and the period of remand has been extended till 10.12.2018. The Detaining Authority on being satisfied that the activities of the detenu were prejudicial to the maintenance of the public order, 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.

3. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to paragraph 3 of the grounds of detention as well as pages 435 and 455 of the booklet supplied to be detenu and would submit that the remand of the detenu has to be extended on 06.12.2018 and the learned Judicial Magistrate No.IV, Madurai recorded that A1 (detenu) was not produced on that day and directed the matter to be called on 10.12.2018, whereas in page No.455 of the booklet, the sponsoring authority addressed a communication to the detaining authority on 06.12.2018 stating that since video conferencing facility was under repair the detenu was not produced on 03.12.2018 but was produced on 06.12.2018. The learned counsel appearing for the petitioner pointing out the discrepancy made a submission that if the detenu was produced on 06.12.2018 the learned Judicial Magistrate would have extended the period of remand and it was recorded that A1 (detenu) was not produced and in the absence of any specific order extending the period of remand the detaining authority ought to have sought a clarification from the sponsoring authority, however, it is not



done so and it exhibits the non-application of mind on the part of the detaining authority and hence, prays for quashment of the impugned order.

4. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State by drawing the attention of this Court to the counter affidavit of the second respondent would submit that since the video conferencing facility at Coimbatore got repaired, the detenu could not be produced and that the 2nd respondent/Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and hence, prays for dismissal of this petition.

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

6. In page No.435 of the booklet supplied to the petitioner, the learned Judicial Magistrate had recorded the fact that A1 (detenu) was not produced and directed to call the matter on 06.12.2018 whereas in page No.455 the sponsoring authority has addressed the detaining authority stating that the detenu was produced before the Court on 06.12.2018 and if really the detenu has been produced on 06.12.2018 the Judicial Magistrate, his period of remand would have been extended and as per the above cited order the detenu was not produced. In the light of the said discrepancy, the detaining authority should have sought a clarification from the detaining authority as to the said discrepancy and it was not done so and no tenable explanation has been offered by the detaining authority as to the said discrepancy and in the considered opinion of the Court, it would vitiate the impugned order of detention and hence on the sole ground, the impugned order warrants interference.

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.59/BCDFGISSSV/2018 dated 08.12.2018. Consequently, the detenu, namely, Saba @ Sabarathinam, son of Pandi, aged about 30 years, who is now detained at Central Prison, Coimbatore 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

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise IX,
Secretariat,
George Fort,
Chennai - 600 009.

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

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

4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.WILLIAM CHRISTOBER, Advocate SR-78104.

H.C.P (MD) No.1767 of 2018
24.07.2019

CS (07.08.2019) 4P 7C