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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.760 of 2020
and
Crl.M.P.No.4350 of 2020

P.Nagaraj

... Petitioner

Vs

- 1.The District Collector cum District Magistrate,
Erode District,
Erode.
- 2.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 3.The Superintendent of Central Prison,
Coimbatore.
- 4.The Superintendent of Police,
Coimbatore.
- 5.The Inspector of Police,
Bunlowpudur Police Station,
Erode District.
- 6.The Chief Secretary to Government,
State of Tamil Nadu,
Fort St.George,
Secretariat, Chennai - 9.

(R6 suo motu impleaded by this Court's order
dated 10.07.2020 made in H.C.P.No.760 of 2020)

... Respondents



PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the 1st respondent in Cr.Mp.No.11/Cyber Law Offender/2020(C-1) dated 28.03.2020 against the detenu Karthik Alias Karthikeyan Son of Nagaraj confined at Central Prison, Coimbatore and set aside the same. Consequently direct the respondents to produce the body of the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Vivekananthan.

For Respondents: Mr.R.Prathap Kumar,
Additional Public Prosecutor.

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing". Though the Miscellaneous Petition has been listed today, the main Petition itself is taken up for final hearing.

2.This Petition has been filed challenging the detention order passed against the detenu by the first respondent in Cr.Mp.No.11/Cyber Law Offender/2020(C-1) dated 28.03.2020, branding him as 'Cyber Law Offender' for spreading false information through electronic media viz., Whatsapp etc.,

3.Heard Mr.R.Vivekananthan, learned Counsel appearing for the Petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4.As rightly pointed out by the learned Counsel for the Petitioner and as evident from the records that though the detenu has been named as "Cyber Law Offender", no provisions of Information Technology Act have been invoked, but only the Sections of Indian Penal Code and the Sections of Copyright Act have been invoked. It shows that there is lack of non-application of mind on the part of the detaining authorities in passing the detention order. Hence, the detention order is vitiated. This Court passes the above order very leniently taking into consideration of the fact that the detenu is a college student, studying II year B.A.,(Economics) in Government Arts College.

5.Accordingly, the detention order passed by the first respondent in Cr.Mp.No.11/Cyber Law Offender/2020(C-1) dated 28.03.2020 is quashed and the Habeas Corpus Petition is allowed.



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The detenu viz., Karthik Alias Karthikeyan Son of Nagaraj, who is detained at Central Prison, Coimbatore is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.

6. It is evident from many of the matters dealt with by this Court that the detaining authorities are not applying their mind while branding the detenus under Act 14/82. Section 2 of Tamil Nadu Act 14 of 1982 clearly defines as to how a detenu should be branded based on the offences committed by him. In the instant case, the allegation against the detenu is that he along with his friends indulged in the activities of publishing an adverse message stating that 24 person are under observation with the infection of Corona virus and quarantined and hence, no one could enter into the village and propagated the same in the social media through whatsapp for the purpose of causing annoyance, inconvenience and danger by illicitly make use of logo of Puthia Thalaimurai news channel by google platform. The above allegations make out offences under Information Technology Act, whereas the police erroneously registered FIR in Cr.No.98/2020 under Sections 291, 271, 501(1)(b) of IPC and Section 51(a) r/w. 63(a) of Copy right Act. Because of non-invocation of relevant provisions of Information Technology, the detenu cannot be branded as "Cyber Law Offender" which vitiates the detention order. Because of the failure on the part of the police authorities in registering the case under correct provisions of law, the offender is escaping from the detention. The detaining authority also, without even verifying as to whether the provisions invoked against the detenu make out a case for naming the detenu as "Cyber Law Offender" mechanically branded him as "Cyber Law Offender". Therefore, The Chief Secretary to Government, State of Tamil Nadu, Fort St. George, Secretariat, Chennai - 9 is suo motu impleaded as party to the proceedings. Mr.R.Prathap Kumar, learned Additional Public Prosecutor takes notice on behalf of the newly impleaded respondent and the newly impleaded respondent is directed to issue necessary instructions,

(i) To the Police authorities to register the FIR under correct provisions of law.

(ii) To the Detaining authorities to scrupulously follow the provisions of Act 14 of 1982 while passing the detention order.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



To

- 1.The District Collector cum District Magistrate,
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Erode.
- 2.The Principal Secretary to Government,
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- 7.The Additional Public Prosecutor,
High Court of Madras,
Chennai.

H.C.P.No.760 of 2020
and
Crl.M.P.No.4350 of 2020

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srg 13/07/2020