



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.633 of 2019

Krishnan @ Ganja Krishnan

... Petitioner

Vs.

- 1.State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... 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 P.D.No.22 of 2019 dated 28.06.2019 and quash the same and direct the respondents to produce the body or person of the detenu, namely, Krishnan @ Ganja Krishnan, S/o.Ramalingam, aged about 44 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

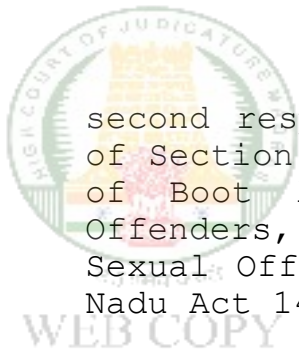
For Petitioner : Mr.N.Pragalathan

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

O R D E R

(Order of the Court was made by **B.PUGALENDHI, J.**)

The detenu himself is the petitioner herein and challenging the impugned order of detention dated 28.06.2019 passed by the



second respondent, branding him 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), he has filed the present habeas corpus petition.

2. A perusal of the Grounds of Detention dated 28.06.2019, passed by the second respondent herein, would show that the detenu came to the adverse notice in the following cases:-

Sl. No.	Name of the Police Station and Crime No.	Sections of Law
1.	Suchindrum Police Station Cr.No.17 of 2019	294(b), 341, 506(ii) IPC
2.	Asaripallam Police Station Cr.No.21 of 2019	294(b), 307, 506(ii) IPC & Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.
3.	Suchindrum Police Station Cr.No.220 of 2019	294(b), 324, 307, 506 (ii) IPC

It is further stated in the grounds of detention that on 14.05.2019, at about 07.00 hours, when the defacto complainant, namely, Sathesh, a resident of Indira Colony, Suchindrum, was standing at Suchindrum bus stop, the detenu and three others has waylaid and abused him with filthy language and asked to part him with money. When the defacto complainant refused and raised an alarm, the detenu took an Aruval, criminally intimidated him and snatched away a sum of Rs.500/-. When the persons nearby came to rescue, they were threatened by the detenu and his associates with dire consequences by brandishing the Aruval and taking advantage of the situation, they fled away from the scene of occurrence. The Suchindrum Police Station, based on the complaint received from the defacto complainant, registered a case in Crime No.221 of 2019 for the commission of offence under Sections 341, 294(b), 387, 307 & 506(ii) IPC (ground case). The detenu was arrested on 14.05.2019 at 12.00 noon and was produced before the Judicial Magistrate No.III, Nagercoil, on the same day and was ordered to be remanded to judicial custody till 28.05.2019. His remand order was extended till 09.07.2019. The Detaining Authority, on a perusal and consideration of the materials, has derived the subjective satisfaction that the activities of the detenu 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.



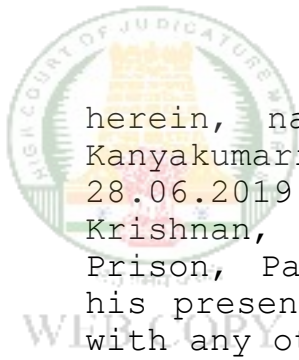
3. The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.4 of the grounds of detention and would submit that the detenu is under custody in connection with the third adverse case as well as ground case and admittedly, the detenu did not file any bail applications so far, whereas, the Detaining Authority has observed that there is a real possibility of the detenu coming out on bail by filing bail applications and indulge in such activities which are prejudicial to the maintenance of public order and peace, but, no materials, whatsoever, have been placed on record to show that the detenu is taking steps to file bail applications. Moreover, the Detaining Authority has derived the subjective satisfaction only with regard to the ground case by placing reliance upon a similar case where bail was granted to the accused therein and has failed to take into consideration the fact that the detenu is also in remand in the third adverse case. This shows the non-application of mind on the part of the Detaining Authority, while deriving the subjective satisfaction and this vitiates the order of detention and hence, prays for quashment of the impugned order of detention.

4. 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.

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

6. As rightly pointed out by the learned counsel for the petitioner, the detenu is in custody on connection with the third adverse case as well as in the ground case and he did not file any bail applications so far. The Detaining Authority has merely stated that there is a possibility of the detenu coming out on bail by filing such applications, but, to derive such a subjective satisfaction, no material or whatsoever has been produced by the Sponsoring Authority that the detenu is taking steps to file bail applications. Moreover, the Detaining Authority has placed reliance on a similar case like that of the ground case, where bail was granted by the concerned Court to the accused therein. However, the incarceration of the detenu in connection with the third adverse case has not at all been taken into consideration. Therefore, the subjective satisfaction arrived at by the Detaining Authority that the detenu would come out on bail and indulge in activities prejudicial to the maintenance of public order stands vitiated and therefore, the impugned order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed by
<https://hcservices.mca.gov.in/hcservices/> the Order of Detention passed by the second respondent



herein, namely, The District Collector and District Magistrate, Kanyakumari District, Nagercoil, in P.D.No.22 of 2019 dated 28.06.2019. Consequently, the detenu, namely, Krishnan @ Ganja Krishnan, aged about 44 years, who is now detained at Central Prison, Palayamkottai 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 (Records)

// True Copy //

/ /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,
O/o.The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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