



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD)No.749 of 2019

Meena, W/o.Sundaram

... Petitioner/Mother of the detenu
Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in No.10/BCDFGISSSV/2019, dated 31.07.2019, quash the same and direct the respondents to produce the detenu, by name Petchiraja, son of Sundaram, aged about 20 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

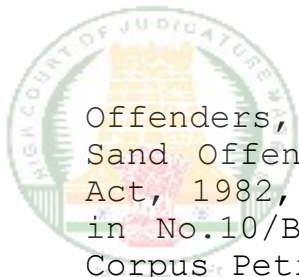
For Petitioner : Mr.R.Vinoth Bharathi

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

ORDER

[Order of the Court was made by **T.RAJA, J.**]

The petitioner is the mother of the detenu viz., Petchiraja, S/o.Sundaram, aged about 20 years and challenging the legality of the impugned order of detention dated 31.07.2019, passed by the second respondent, under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, 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 of 1982) and branding him as 'Goonda' in No.10/BCDFGISSSV/2019, came forward to file the present Habeas Corpus Petition.

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2.Learned counsel appearing for the petitioner submitted that when the detenu was arrested on 14.06.2019, he has not even chosen to move any bail application, however, in the grounds of detention, the second respondent/detaining authority has chosen irrelevant reason to pass the impugned detention order stating that in a case having few sections of law similar to the ground case, registered in Tirunelveli Medical College Hospital Police Station, Crime No.30 of 2018 under Sections 147, 148, 447, 294(b), 324, 302, 506(ii), 120(B) IPC and Sections 3 and 4(a) of the Explosive Substances Act, 1908 r/w. Sections 3(i)(r)(s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 and 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989, the accused therein namely, Arunbabu, S/o.Ramanathan, was granted bail by this Court in Crl.A.(MD)No.228 of 2018, dated 03.05.2018 and hence, there is every possibility of the detenu coming out on bail in the ground case. It is his contention that when there is no similarity between the case of the detenu and the case cited in Paragraph No.6 of the grounds of detention, the question of entertaining apprehension in the mind of the second respondent/detaining authority that there is a real possibility of the detenu coming out on bail in the case in Crime No.105 of 2019 [ground case], by filing bail application before the appropriate Court does not arise at all, which clearly shows that the detaining authority has not applied his mind to arrive at the subjective satisfaction for invoking the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, 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 of 1982) against the detenu.

3.Adding further, the learned counsel appearing for the petitioner has submitted that the adverse case registered against the detenu for the offences under Sections 294(b), 323 and 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 altered into Sections 294(b), 323 and 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 read with Sections 3(i)(r)(s), 3(2)(va) of SC/ST (Prevention of Atrocities) Act, is without any basis to come to the conclusion that the detenu is a habitual offender, thereby causing hindrance to peace and tranquility of the public.

4.Learned Additional Public Prosecutor appearing for the respondents submitted that the detaining authority having scrutinized all the materials placed before him, has rightly come to the conclusion that the detention of the detenu is necessary to keep peace and tranquility in the public.



5. Heard the learned counsel appearing for the parties and perused the materials on record.

6. As the detenu has been arrested in the ground case relating to the offences said to have been committed by him under Sections 147, 148, 341, 294(b), 302, 506(ii) IPC r/w. 3(i)(r)(s), 3(2)(va) of SC/ST (Prevention of Atrocities) Act, altered into Sections 147, 148, 341, 294(b), 302, 506(ii) IPC r/w. Sections 3(i)(r)(s), 3(2)(va) of SC/ST (Prevention of Atrocities) Act, and 120(B) IPC, invoking Section 3(1) of the Tamil Nadu Act 14 of 1982 to detain the petitioner's son as 'Goonda' referring to a case having few Sections of law similar to the ground case registered in Tirunelveli Medical College Hospital Police Station, Crime No.30 of 2018 under Sections 147, 148, 447, 294(b), 324, 302, 506(ii), 120(B) IPC and Sections 3 and 4(a) of the Explosive Substances Act, 1908 r/w. Sections 3(i)(r)(s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 and 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989, wherein bail was granted to the accused therein, to come to the subjective satisfaction as to the release of the detenu on bail on the ground that there is every possibility of the detenu being released on bail, in our considered opinion, is without basis. In fact, the case relied on by the detaining authority is not similar to the case, in which, the detenu was arrested. Secondly, the detenu has not even moved any bail application till date. Therefore, the question of citing a reason that there is every possibility of detenu coming out on bail is also far from acceptance. That also shows that there was want of subjective satisfaction reached while passing the impugned detention order. On this sole ground, the impugned detention order is liable to be quashed.

7. In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent herein, namely, the Commissioner of Police, Tirunelveli City, in Detention Order No.10/BCDFGISSSV/2019, dated 31.07.2019. Consequently, the detenu, namely, Petchiraja, son of Sundaram, aged about 20 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 (AD-II)

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Sub Assistant Registrar (CS)

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To

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City.

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

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

5.The Joint Secretary to Government,
Public Department (Law and Order)
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009

H.C.P. (MD) No.749 of 2019
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JMN(24.01.2020) 4P : 6C