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H.C.P (MD) No.827 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2020

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD) No.827 of 2019

Vijayalingam

... Petitioner/Father of detenu

Vs.

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

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

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the entire records on the file of the second respondent in 52/BCDFGISSSV/2019 and set aside the order of detention passed therein, dated 03.08.2019 and direct the respondents to produce the detenu, by name, Bala @ Balakrishnan, Male, aged 22 years, before this Court, now detained at Central Prison, Madurai and set him at liberty forthwith.

For Petitioner : Mr.J.William Christopher

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

ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

The petitioner is the father of the detenu viz., Bala @ Balakrishnan, S/o.Vijayalingam, aged about 22 years. The detenu has been detained, as per the order of the second respondent, dated 03.08.2019, under Section 2(f) of the Tamil Nadu Act 14 of



1982, branding him as "GOONDA". Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. 2.A perusal of the Grounds of Detention dated 03.08.2019, passed by the second respondent herein, would disclose that one Malarmani, W/O. Thangamari is resident of Avaniyapuram, Madurai and her son Satheeshkumar was having illegal intimacy with Bhuvaneswari, W/o.Pandi of Villapuram. On knowing this Deva @ Deivendrapoomani, brother of Bhuvaneswari warned both of them. But, they continued their relationship. Aggrieved over it, Deva @ Deivendrapoomani arraigned to murder Satheeskumar. Satheeshkumar used to consume Ganja by purchasing it from Bala @ Balakrishnan (detenu), who was selling ganja near Thevar Statue, Keelmadurai. Deva @ Deivandrapoomani is the friend of Bala @ Balakrishnan. Deva @ Deivandrapoomani discussed his plan of murdering Satheeskumar with his relatives and friends Muniyasamy, S/O.Shanmugavel, Manikandan @ Ponmamthinni Mani, S/o. Ramasamy, Bala @ Balakrishnan, Rathinakumar, Ananthaselvam and Muneeswaran. They also agreed to help Deva @ Deivandrapoomani in murdering Satheeshkumar. Bala @ Balakrishnan told them that Satheeshkumar would come to buy Ganja at 20.00 hours on 27.04.2019. The detenu along with other accused were waiting there and the detenu. Satheeshkumar came there at 20.00 hours to buy ganja. The detenu caught hold of Satheeshkumar and other accused attacked him with sword indiscriminately and Satheeshkumar laid on the ground in a pool of blood. The accused including the detenu brandished the weapons and threatened to kill the persons, where were in the nearby tea shop and they fled from the scene of occurrence. Based on the complaint of Malarmani, a case in Crime No.420 of 2019 for the offence under Sections 147, 148 and 302 IPC was registered on the file of V2 Ananiyapuram Police Station. The detenu surrendered before the Learned Judicial Magistrate No.VI, Madurai on 01.05.2019 and were remanded to judicial custody in Central Prison, Madurai. The Detaining Authority, on being satisfied 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 making a challenge to the same, the present Habeas Corpus Petition is filed.

3 When the matter was taken up for consideration, among other grounds, the learned counsel for the petitioner has raised a plea that the Detaining Authority, by pick and choose, has passed the impugned detention order. Though there are so many accused involved in this case, the Detaining Authority has passed the detention order only as against three persons. That apart, there is non-application of mind on the part of the Detaining Authority by referring the bail order in the grounds of detention, where the



Detaining Authority has taken a ground that the investigation was still pending, whereas even before that, investigation was completed, and, therefore, the same would vitiate the detention order.

4. We have heard the learned Additional Public Prosecutor appearing for the State and perused the records carefully.

5. The Detaining Authority, while arriving at a subjective satisfaction for detaining the detenu as 'Goonda', has taken Crime No.420 of 2019 as the ground case and also has stated in the grounds of detention that the investigation is pending. The detention order was passed on 03.08.2019. The learned counsel for the petitioner has drawn our attention to the bail application filed by the petitioner before the Court of Sessions, wherein, it was represented that as on 25.07.2019 the investigation in Crime No.420 of 2019 has been completed and charge sheet has also been laid. When this bail order was also placed before the Detaining Authority, without ascertaining as to whether the investigation has been concluded or not, the Detaining Authority has arrived at a subjective satisfaction as if the investigation was pending and has passed the impugned detention order and, therefore, on the ground of non-application of mind, the detention order is liable to be quashed.

6. In the result, the Habeas Corpus Petition shall stand allowed and the Detention Order, passed by the second respondent, in his proceedings in No.52/BCDFGISSSV/2019, dated 03.08.2019, is quashed. The detenu, namely, Bala @ Balakrishnan, S/o.Vijayalingam, aged about 22 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar (CS)

SML



To

- 1.The Principal Secretary to Government,
Government of Tamilnadu,
Home, Prohibition and Excise IX Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
4. The Joint Secretary to Government,
Public (Law & order), Fort St. George,
Chennai - 9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P (MD) No.827 of 2019

Dated:
20.03.2020

SCR(CO)
TR(27.05.2020)4P 6C