



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.979 of 2019

Mariyayee

... Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

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

... 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 Cr.M.P.No.48/2019 dated 26.08.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Bala @ Balamurugan, son of Durairaj, aged about 27 years, now detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

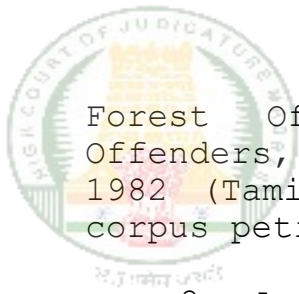
For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.R.Anandaraj
Additional Public Prosecutor

O R D E R

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

The mother of the detenu is the petitioner herein and challenging the impugned order of detention dated 26.08.2019 passed by the second respondent, branding her son as "Goonda" under the provisions of Section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Cyber Law Offenders, Drug Offenders,



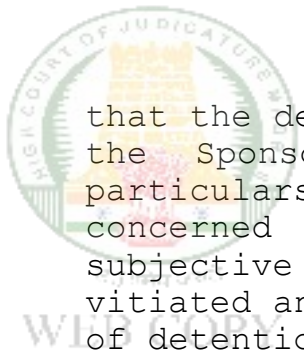
Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), she has filed the present habeas corpus petition.

2. A perusal of the Grounds of Detention dated 26.08.2019, passed by the second respondent would show that the detenu came to the adverse notice in the following cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1	Somarasampettai Police Station Cr.No.230 of 2018	392 IPC altered into 395 & 397 IPC
2	Samayapuram Police Station Cr.No.64 of 2019	392 IPC
3	Somarasampettai Police Station Cr.No.106 of 2019	397 IPC

It is further stated in the grounds of detention that on 27.07.2019, at about 06.00 a.m., when the defacto complainant, namely, Sekar was waiting for a bus at Allithurai, the detenu approached him and demanded money. When he refused and raised an alarm, the detenu, brandishing a Knife, threatened him snatched a sum of Rs.700/- from the complainant. When the persons nearby came to rescue, they were threatened by the detenu with dire consequences and taking advantage of the situation, the detenu fled away from the scene of occurrence. Somarasampettai Police Station, based on the complaint received from the defacto complainant, registered a case in Crime No.125 of 2019 for the commission of offence under Section 397 IPC (ground case). The detenu was arrested on 27.07.2019, produced before the Court of Judicial Magistrate No.V, Tiruchy and was ordered to be remanded to judicial custody. 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 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.5 of the grounds of detention and would submit that 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 Sponsoring Authority has not produced any similar case particulars, where bail was granted to the accused therein by the concerned Courts. In the absence of any such documents, the subjective satisfaction derived by the Detaining Authority is vitiated and therefore, he prays for quashment of the impugned order of detention.

4. Per contra, Mr.R.Anandaraj, 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, admittedly the detenu did not file any bail applications so far and 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. In the absence of any such positive material as to the attempts being made for filing bail applications or the similar case particulars where bail was granted to the accused therein, the impugned order of detention is vitiated and therefore, the impugned order is liable to be quashed.

7. Accordingly, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, District Collector and District Magistrate, Tiruchirappalli District, Tiruchirappalli, in Cr.M.P.No.48/2019 dated 26.08.2019. Consequently, the detenu, namely, Bala @ Balamurugan, son of Durairaj, aged about 27 years, who is now detained at Central Prison, Tiruchirappalli 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 (Crl.Side)

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Sub Assistant Registrar(CS)

gk

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To

- 1.The Additional Chief Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order), Fort St.George,
Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.979 of 2019
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AP(21/05/2020) 4P 6C