



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.02.2020**

CORAM:

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

AND

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

H.C.P. (MD) Nos.1331,1336 and 1340 of 2019

Amutha : Petitioner/Mother of the detenus in
H.C.P. (MD) .No.1331 and 1336/2019

Thavamalar : Petitioner/wife of the detenu in
H.C.P. (MD) .No.1340/2019

Vs

1.State of Tamil Nadu
rep. by Additional Chief Secretary to Government
Home, Prohibition & Excise (XVI) Department,
Secretariat, Fort St. George, Chennai-09.

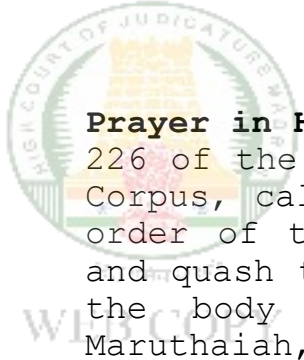
2.The District Magistrate & District Collector,
O/o.The District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.

3.The Superintendent
Central Prison,
Trichirappalli.

: Respondents in all H.C.Ps

Prayer in H.C.P. (MD) Nos.1331/2019: 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 P.D.O.No.80/2019 dated 21.11.2019 and quash the same as illegal and direct the respondents to produce the body and person of petitioner's son/detenu by name Veeramani, S/o.Minikanu, aged about 27 years residing at Udayalipatti Post, Kulathur Taluk, Pudukkottai District, who is detained as a "Goonda" at Trichirappalli Central Prison, before this Court and set him at liberty.

Prayer in H.C.P. (MD) Nos.1336/2019: 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 P.D.O.No.79/2019 dated 21.11.2019 and quash the same as illegal and direct the respondents to produce the body and person of petitioner's son/detenu by name Sivakumar, S/o.Minikanu, aged about 30 years residing at Udayalipatti Post, Kulathur Taluk, Pudukkottai District, who is detained as a "Goonda" at Trichirappalli Central Prison, before this Court and set him at liberty.



Prayer in H.C.P. (MD) Nos.1340/2019: 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 P.D.O.No.78/2019 dated 20.11.2019 and quash the same as illegal and direct the respondents to produce the body and person of petitioner's husband/detenu by name Maruthaiah, S/o.Vattappan, aged about 45 years residing at Udayalipatti Post, Kulathur Taluk, Pudukkottai District, who is detained as a "Goonda" at Trichirappalli Central Prison, before this Court and set him at liberty.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.K.Dinesh Babu
Addl.Public Prosecutor
(in all H.C.Ps)

C O M M O N O R D E R

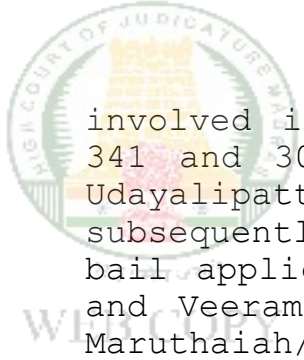
[Order of the Court was made by **T.RAJA, J.**]

Amutha, mother of the detenus namely Veeramani and Sivakumar, aged about 27 and 30 years respectively, has filed H.C.P. (MD).Nos.1331 and 1336/2019 assailing the impugned detention orders, passed by the 2nd Respondent in P.D.O.Nos.80 and 79/2019 dated 21.11.2019 and quash the same as illegal and direct the respondents to produce the body and person of detenus by name Veeramani and Sivakumar, S/o.Minikanu, who are detained as "Goonda" at Trichirappalli Central Prison, before this Court and set them at liberty.

Likewise, Thavamalar, wife of the detenu viz., Maruthiah, aged about 47, has also filed H.C.P.(MD).No.1340/2019, assailing the impugned detention order, dated 20.11.2019, passed by the second respondent in P.D.O.No.78/2019 and quash the same as illegal and direct the respondents to produce the body and person of detenu by name Maruthaiah, S/o.Vattappan, who is detained as "Goonda" at Trichirappalli Central Prison, before this Court and set him at liberty.

2.Since the detenus/A-3 and A-2 in H.C.P.(MD).Nos.1331 and 1336/2019 are brothers and the detenu/A-1 in H.C.P.(MD).No.1340/2019 is the paternal uncle of the detenus/A-3 and A-2 in H.C.P.(MD).Nos.1331 and 1336/2019, at request of both parties, all the three petitions are taken up together.

3.Learned counsel appearing for the petitioners, assailing the impugned detention orders, only on the ground of registration of a solitary ground case in Cr.No.104/2019 for offences punishable under Sections 341 and 302 I.P.C against all the detenus, argued that the Detaining Authority ought not to have resorted to Act 14 of 1982 to brand the petitioners as "Goondas" under Section 2(f) of the Tamil Nadu Act, 14 of 1982, merely for the reason that they have



involved in Cr.No.104/2019 for offences punishable under Sections 341 and 302 I.P.C. After registration of Cr.No.104/2019 by the Udayalipatti Police Station, they were arrested on 26.10.2019 and subsequently, remanded into judicial custody and thereafter, when a bail application was moved in Cr.M.P.No.3183/2019 by Sivakumar/A-2 and Veeramani/A-3, the same was also dismissed on 13.11.2019 and Maruthaiah/A-1 has not filed any bail application at all. While the matter stands as above, the Detaining Authority, by stating that 'resource to the normal criminal law will not have the desired effect of effectively preventing the detenus from indulging in such activities, which are prejudicial to the maintenance of public peace and public order', have wrongly passed the impugned detention order. When there is a similar case, where bail has been granted to a similarly placed accused, the Detaining Authority, without dealing with the similar case, wrongly resorted to Act 14 of 1982 to brand the detenus as 'Goondas'.

4. In similar circumstances, the Honourable Supreme Court in the case of **Huidrom Konungjao Singh Vs State of Manipur and Others**, reported in (2012) 3 MLJ (Cr1) 794 has categorically held that the Detaining Authority should be aware that the detenus already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be *ipse dixit* of the Detaining Authority. His subjective satisfaction based on materials, normally, should not be interfered with. But, in the present case, there is no foundation or basis available to the Detaining Authority to come to the conclusion that the detenus are likely to be released from custody in the near future. Therefore, the Hon'ble Apex Court, while laying down the law, has held that the Detaining Authority has to satisfy the Courts on the following points:-

1) The authority was fully aware of the fact that the detenu was actually in custody.

2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated."

5. A perusal of the above observation clearly shows that in either of the situations, the Detaining Authority can satisfy the Courts that there was an application of subjective satisfaction made, while passing the impugned order. Therefore, resorting to the



provisions of Act, 14 of 1982 is not permissible. Hence, the impugned detention orders are liable to be quashed and the petitions be allowed, directing the respondents to set them on liberty.

6. Heard the parties on both sides.

WEB COPY

7. When A-1 is the paternal uncle of A-2 and A-3 and A-2 and A-3 are brothers and sons of Amutha, Udayalipatti Police Station, Kulathur Taluk, Pudukkottai District has registered a criminal case in Cr.No.104/2019 for offences punishable under Sections 341 and 302 I.P.C against them and in this regard, Mr.Veeramani/A-3 was arrested on 29.10.2019, when Sivakumar/A-2 was arrested on 26.10.2019 and Maruthaiah/A-1, paternal uncle of A-2 and A-3 were arrested on 27.10.2019. Immediately thereafter, CrI.M.P.No.3183/2019 was moved before the learned Principal District and Sessions Judge, Pudukkottai on behalf of A-2 and A-3. But the learned District Sessions Judge dismissed the same on 13.11.2019. After the dismissal of the bail application, neither A-2 and A-3 renewed their bail application nor A-1 paternal uncle of A-2 and A-3 moved any application. Therefore, the observation made by the Hon'ble Apex Court in the case of **Huidrom Konungjao Singh Vs State of Manipur and Others** (mentioned supra) has to be considered. The relevant portion is also extracted as under:

"If the detention order is challenged, the detaining authority has to satisfy the Court the following facts:

1) The authority was fully aware of the fact that the detenu was actually in custody.

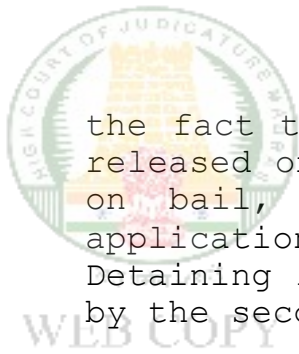
2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated."

8. When the present case is examined, in the light of the aforesaid settled legal position, it can be seen that firstly, A-1 has not moved any bail application at all. Secondly A-2 and A-3 having moved their bail application in CrI.M.P.No.3183/2019 before the learned Principal District and Sessions Judge, Pudukkottai, that was dismissed on 13.11.2019 and thereafter, no fresh application has been filed, taking into account any subsequent events. Therefore, the subjective satisfaction reached by the Detaining Authority that they are likely to be released on bail is far from acceptance.

9. In view of the above, following the observation of the Hon'ble Apex Court that the Detaining Authority should be aware of



the fact that the detenu is already in custody and is likely to be released on bail and the conclusion that the detenu may be released on bail, without any basis, more particularly, when no bail application was filed, cannot be on the basis of *ipse dixit* of the Detaining Authority, therefore, the subjective satisfaction reached by the second respondent has been vitiated.

10. In the result, the impugned detention orders passed by the second respondent in Cr.M.P.Nos.80, 79 and 78/2019 dated 21.11.2019 and 20.11.2019 are set aside and all the petitions are allowed and the detenus by name Veeramani and Sivakumar, S/o.Minikanu, who are detained as "Goondas" at Trichirappalli Central Prison, are set at liberty. Likewise the detenu by name Maruthaiah, S/o.Vattappan, who is detained as "Goonda" at Trichirappalli Central Prison is also set at liberty. The Superintendent of Central Prison, Tiruchirappalli/third respondent is directed to release them forthwith, unless their presence is required in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Additional Chief Secretary to Government
Home, Prohibition & Excise (XVI) Department,
Secretariat, Fort St. George, Chennai-09.
- 2.The District Magistrate & District Collector,
O/o.The District Magistrate and District Collector,
Pudukkottai District, Pudukkottai.
- 3.The Superintendent
Central Prison, Trichirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai - 09.

+3 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate (SR-4520, 4521 & 4522[F] dated 03/02/2020)