



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.939 of 2020

Mugesh

... Petitioner/Detenu

-vs-

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

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

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

... Respondents

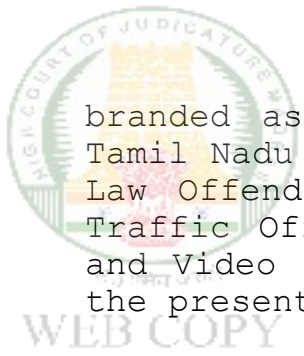
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus, calling for the entire records connected with the detention order passed in P.D.No.27 of 2020 dated 05.10.2020 on the file of the 2nd respondent herein to quash the same and direct the respondents to produce the detenu or body of the detenu namely, Mugesh, aged about 22 years, S/o.Tharmaraj, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner	: Mr.N.Pragalathan
For Respondents	: Mr.S.Chandrasekar, 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 legality of impugned order of detention dated 05.10.2020 passed by the second respondent, in and by which, the detenu has been

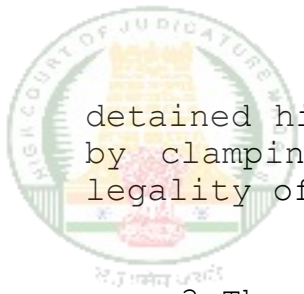


branded as a Goonda under the provisions of Section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), he has filed the present habeas corpus petition.

2.A perusal of the Grounds of Detention dated 05.10.2020, passed by the second respondent herein, the detenu, viz., Mugesh came to the adverse notice in the following cases:

Sl. No.	Name of the Police Station and Crime No.	Sections of Law
1	Manavalakuruchi Police Station, Cr.No.86 of 2019, dated 17.02.2019	342, 294(b), 323, 324 and 506(ii) IPC
2	Manavalakuruchi Police Station, Crime No.233 of 2020, dated 11.06.2020	294(b), 323, 326, 307 and 506(ii) IPC
3	Vellichanthai Police Station, Crime No.217 of 2020, dated 30.09.2020	294(b), 452, 323, 324, 427 and 506(ii) IPC
4	Manavalakuruchi Police Station, Crime No.282 of 2020, dated 30.09.2020	294(b), 323, 427 and 506(ii) IPC

It is further stated in the grounds of detention that based on a complaint given by the *de facto* complainant namely, Anis on 16.09.2020 Manavalakuruchi Police has registered a case in Crime No.283 of 2020, for the commission of offence under Sections 341, 294(b), 392 and 506(ii) IPC. A perusal of the complaint would, among other things, disclose that the *de facto* complainant was going near Thirunayinarkurichi fish market in his motor cycle in order to attend his work. Due to his previous enmity, the accused Anith and his close associate Mugesh waylaid him and demanded money. The *de facto* complainant had replied that he had no money, asked them to leave him and started his two wheeler. At that time, the accused took out an aruval from their back and they had extorted Rs.400/- from the *de facto* complainant at a knife point. When he raised an alarm, the persons nearby came to rescue and they were threatened by the detenu with dire consequences by brandishing the aruval and taking advantage of the situation, the detenu fled away from the scene of occurrence. The detenu was arrested on 16.09.2020 at 15.30 hours and was produced before the Court of Judicial Magistrate, Eraniel, on the same day and was ordered to be remanded to judicial custody till 25.09.2020 and his period of remand was extended till 09.10.2020. 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 though the Detaining Authority has taken into consideration the arrest and incarceration of the detenu in connection with all the cases, both adverse as well as ground case, in order to derive subjective satisfaction that there is real and imminent possibility of the detenu coming out on bail and indulge in activities, which are prejudicial to the maintenance of public order, has taken into consideration the order granting bail in similar case in respect of a case registered by Eraniel Police in Crime No.206 of 2019 and it pertains to ground case alone and however, has failed to take into consideration, his arrest and incarceration in other adverse cases and the bail application filed by the detenu in Crl.M.PNo.1597 of 2020 was dismissed on 23.09.2020 by the learned Judicial Magistrate, Eraniel and the second bail application in Crl.M.PNo.1634 of 2020 on 30.09.2020 and hence prays for quashment of the impugned order of detention.

4.Per contra, Mr.S.Chandra Sekar, 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 on record.

6.The detenu was arrested and remanded on 16.09.2020 in ground case in Crime No.283 of 2020 on the file of the Eraniel Police Station and also in crime No.217 of 2020 on the file of the Vellichanthai Police Station in one of the adverse cases. The detaining authority knowing that the detenu is in judicial custody in connection with crime No.283 of 2020, has arrived at the subjective satisfaction that the detenu could come out on bail by filing bail application. The detenu has filed two bail applications before the learned Judicial Magistrate, Eraniel in Crl.M.P.No.1597 of 2020 and in Crl.MP.No.1634 of 2020 in connection with Crime No.283 of 2020 and the same were dismissed on 23.09.2020 and on 30.09.2020 respectively. However, the detaining authority has arrived at a subjective satisfaction that the detenu may come out on bail by filing further bail application, has relied on a case in Crime No.206 of 2019 on the file of the Eraniel Police Station of



similar offence that of the ground case.

7. Apart from the ground case, the detenu was in remand in one of the adverse cases in Crime No.217 of 2020 on the file of the Vellore Police Station. But the Detaining Authority has not taken note of the judicial custody of the detenu in connection with the adverse case to arrive at the subjective satisfaction on the imminent possibility of the detenu coming out on bail.

8. As rightly pointed out by the learned counsel for the petitioner, the Detaining Authority in order to derive the subjective satisfaction that there is real and imminent possibility of the detenu coming out on bail and indulge in activities, which are prejudicial to the maintenance of public peace and order, has placed reliance upon a similar order granting bail to the concerned accused, but, it pertains only to the ground case and however, the Detaining Authority has failed to take into consideration of the fact the detenu was also arrested and is incarceration in connection with the other adverse case.

9. In the considered opinion of this Court, the above said infirmities would vitiate the impugned order of detention and the same is accordingly, quashed.

10. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, The District Collector and District Magistrate, Kanniyakumari District, Nagercoil, in P.D.No.27 of 2020, dated 05.01.2020. Consequently, the detenu, namely, Muges, aged about 22 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 (CS II)

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Sub Assistant Registrar(CS)

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To

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



2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

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

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

H.C.P(MD)No.939 of 2020
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