

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2010

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE C.S.KARNAN

H.C.P.Nos.2224 and 2225 of 2009

Raja ..Petitioner in both the H.C.Ps

Vs.

1. The State of Tamilnadu,
rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 9.
2. The District Collector and District Magistrate,
Krishnagiri District,
Kishnagiri. ..Respondents in both the HCPs

Prayer in HCP.2224/2009:

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's brother in law Thiru. Sivakumar @ Minnal Siva, aged 36 years, son of Ramasamy Gounder, detained under Act 14 of 1982 vide detention order dated 19.11.2009 on the file of the 2nd respondent herein made in S.C.No.49 of 2009 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this court and set him at liberty from Central Prison, Salem.

Prayer in HCP.2225/2009:

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's friend Thiru. Jayavel, aged 35 years, son of Govindan, detained under Act 14 of 1982 vide detention order dated 19.11.2009 on the file of the 2nd respondent herein made in S.C.No.48 of 2009 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and set him at liberty from Central Prison, Salem.

For Petitioners : Mr.R.Sankarasubbu
for Mr.K.Ilayaraja

For Respondents : Mr.V.R.Balasubramanian, A.P.P.

COMMON ORDER

(The order of the Court was made by M.CHOCKALINGAM, J.)

This order shall govern these two writ applications. These two applications have been filed challenging the detention orders made by the second respondent in S.C.Nos.49 and 48 of 2009 respectively dated 19.11.2009 whereby the brother-in-law of the petitioner in HCP.No.2224/2009 viz., Sivakumar @ Minnal Siva and the friend of the petitioner in HCP.No.2225/2009 viz., Jayavel were ordered to be detained under Act 14 of 1982 branding them as Goondas.

2. The Court heard the learned counsel for the petitioner and also looked into the materials available on record including the order under challenge.

3. It is not in controversy, pursuant to the recommendation made by the sponsoring authority that the detenu in HCP.2224/2009 was involved in four adverse cases viz., (1) Kaveripattinam Police Station in Crime No.486/2003 for the offence under sections 147, 323, 325, 465, 364-A & 506(ii) I.P.C. (2) Krishnagiri Taluk Police Station in Crime No.971/2006 for the offence under section 107 Cr.P.C (3) Gurabarapalli Police Station in Crime No.454/2007 for the offence under sections 147, 427, 448, 506(i) and 380 of IPC and (4) Krishnagiri Taluk Police Station in crime No.751/2009 for the offence under sections 420 and 506(ii) IPC and that the detenu in HCP.2225/2009 was involved in three adverse cases viz., (1) Krishnagiri Taluk Police Station in Crime No.971/2006 for the offence under section 107 Cr.P.C (2) Gurabarapalli Police Station in Crime No.454/2007 for the offence under sections 147, 427, 448, 506(i) and 380 of IPC and (3) Krishnagiri Taluk Police Station in crime No.751/2009 for the offence under sections 420 and 506(ii) IPC and also a ground case for both the detainees in Crime No.630/2009 registered by the Krishnagiri Taluk Police for the offence under section 302 I.P.C. in the occurrence that had taken place on 8.8.2009 alleging that the detainees along with other accused murdered one Raman @ Thuppaki Raman on the instigation of one Subramanian; that the deceased Raman was found dead in his house and on information, the Police investigated the case and found that the detainees along with the other accused guilty of murder; the detaining authority, on scrutiny of the materials available, recorded the subjective satisfaction that the activities of the detainees were prejudicial to the maintenance of the public order and has made the order under challenge after terming them as Goodas.

4. Advancing the argument on behalf of the petitioner the learned counsel would urge that insofar as the petitioners are concerned they have made bail applications in the ground case registered in Crime No.630 of 2009 and the applications were dismissed on 16.11.2009 but the detention orders came to be passed within few days that was on 19.11.2010 wherein the authorities have stated that there is real possibility of the detenu come out on bail which is without any basis or material whatsoever.

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5. Added further learned counsel, the said case was registered under section 302 I.P.C. for the occurrence that had taken place

inside the residential house. The prosecution had no direct evidence to offer. It is seen that the house was kept locked and it was break open and the dead body was found. Neither it is a public place now it had caused panic to the public. Recording satisfaction by the detaining authority that the activities of the detenues were prejudicial to the maintenance of the public is not warranted. Under such circumstances, the detention orders are vitiated and they to be set aside.

6. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

7. Admittedly, the orders under challenge came to be passed by the detaining authority on 19.11.2009 based on the involvement of the detenues in four adverse cases and three adverse cases respectively and one ground case in Crime No.630/2009. As rightly pointed out by the learned counsel for the petitioners, the materials would clearly indicate that the occurrence has taken place inside the residential house. An information was given by the neighbour of the deceased to the brother of the deceased who in turn informed it to the Police. It is not shown as a public place and there is nothing to indicate that there was any panic created by the detenues to invoke the provision of Act 14 of 1982 to term them as goondas. To record the subjective satisfaction that the activities of the person were prejudicial to the maintenance of public order, there must be something to indicate that the incident has taken place in the public place it also created panic in the mind of the public. In the instant case, both are absent. Hence, recording satisfaction by the detaining authority that the activities of the detenues were prejudicial to the maintenance of public order, cannot be accepted. Further, as could be seen from the orders of detention, bail applications filed by the detenues were dismissed only on 16.11.2009 and the order under challenge came to be passed on 19.11.2009, a few days later, but the authority has stated that by making another application there is real possibility of the detenu coming out on bail. Hence, the said observation was without any basis or any material muchless cogent material. Hence, the Court is unable to sustain the order in view of the grounds urged and recorded above. Therefore, the orders of detention have got to be set aside.

8. Accordingly, the Habeas Corpus Petitions are allowed setting aside the detention orders passed by the 2nd respondent in S.C.Nos.49 and 48/2009 respectively dated 19.11.2009. The detenu in HCP.2224/2009, namely Sivakumar @ Minnal Siva and the detenu in HCP.2225/2009 namely Jayavel who are now confined at Central Prison, Salem are directed to be set at liberty forthwith unless their presence is required in connection with any other case.

Sd/-

Asst. Registrar

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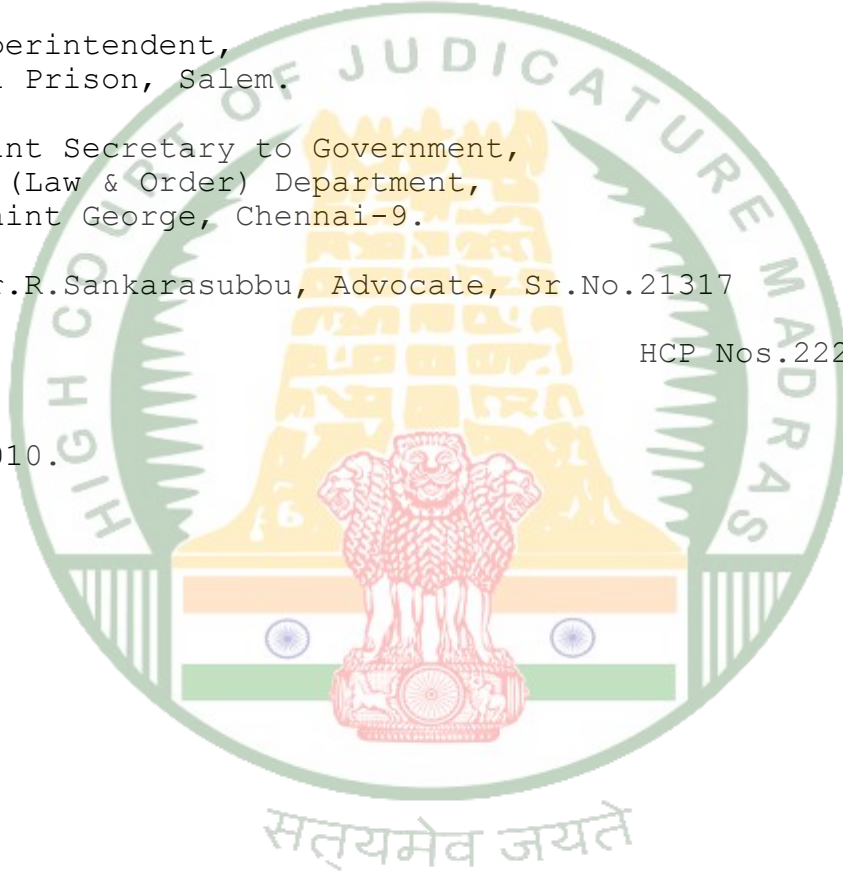
To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.
2. The District Collector and District Magistrate,
Krishnagiri District, Kishnagiri.
3. The Public Prosecutor
High Court, Madras.
4. The Superintendent,
Central Prison, Salem.
5. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort Saint George, Chennai-9.

1 cc to Mr.R.Sankarasubbu, Advocate, Sr.No.21317

HCP Nos.2224 & 2225 of 2009

VSV {CO}
TP/15.4.2010.



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