

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P.No.2516 of 2018

Velu

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St.George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Chennai city police,
Greater Chennai,
Commissioner office,
Vepery, Chennai – 600 007.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.
- 4.The Director General of Police,
Government of Tamil Nadu,
Chennai.

5.The Union of India,
Rep., by its Secretary to Govt.,
Ministry of Home Affairs,
Dept., of Internal Security,
North Block,
New Delhi – 100 001.

(4th and 5th respondents are suo motu impleaded
as per order dated 02.11.2018 in H.C.P.No.2516
of 2018)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus calling for the records in No.842/BCDFGISSSV/2018 dated 17.09.2018 on the file of second respondent herein and set aside the same as illegal and produce the detenu Velu, son of Elumalai, aged about 29 years, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy.

For Respondents : Mr. R. Prathap Kumar,
Additional Public Prosecutor.

ORDER

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

If a policeman is attacked, the Society is not safe. The Police has got powers to use mild force for the maintenance of law and order. However, what is happening in the society is that people gather in group to overpower the Police, abuse and attack him while doing his statutory duty. Many cases of attacks on Police are reported in the newspapers and shown in the visual media. Recently, last week, a young policeman Subramanian was murdered in a bomb attack made by a rowdy while he was sought to be apprehended by a Special Police Team in Tuticorin District. While doing his duty, he laid down his precious life for the sake of the society leaving behind his young wife who is two months pregnant and a 10 month old child in lurch. The lady lost her husband at the age of 25 and the 10 month old boy lost his father's love, affection, care and guidance for the rest of his life. It is still worse in the case of foetus in the mother's womb. The position of unborn child would make everyone to shed tears.

2. Though the Honourable Chief Minister as head of the State Government has ordered Rs. 50 lakhs as compensation as well as a Government job to a person in the family, no other political party including ruling party, except DMDK party condoled the death of the young policeman at the hands of rowdy element. Human rights activists and organizations who used to make hue and cry and condemn police action against criminals as violation of human rights, are keeping quiet. Probably, in their perspective, the policemen are not human beings and there is no violation of rights if police suffer or die at the hands of criminals. It is very disheartening to note that the representatives of people, ie., persons who claim to be political leaders, have neither condemned the said incident nor offered condolence for the death of the young policeman to the bereaved family. They did not even meet the young widow nor did they come forward to offer any financial support. However, when a 2 years old Sujith Wilson, fell into a borewell dug by his own father in October 2019 and ultimately died, inspite of earnest efforts taken, near Trichy, all the political parties lined up and paid lakhs of rupees to the father of the child. This Court is not against payment any compensation or relief to the said family. However, the same yardstick is not applied by the political leaders in the case of death of young constable P.Subramanian, who was killed in Vallanadu in Tuticorin District. Probably, the guarded silence is due to the political strategy

based on communal considerations in the interest of their political fortunes. The cautious silence tactically approves the death of the Police Officer in the hands of the rowdy element.

3. When a father and son duo viz., P.Jeyaraj & J.Benicks died due to police brutality, while in custody, all the political leaders condemned the said incident, which has to be necessarily done and condolences poured in from various political leaders to the family. This case is no different from that case. Political leaders, particularly the Local Minister and the Local M.P. have not even offered their condolence to the family of martyred police constable Subramanian. Only the Director General of Police and other police officials attended the funeral. The only political party representative, who attended the funeral is the local MLA. Political parties, unfortunately, have not recognized the ultimate sacrifice made by slain constable Subramanian.

4. This kind of attitude of political parties including ruling party would demoralize the police force and they will not have any confidence to discharge their duties without fear and they should also have confidence that their family will be looked after not only by the Government but also by the political parties and the

representatives of the people, in case, any unfortunate eventuality happens to them.

5. The brutal murder of policemen due to a bomb thrown by a rowdy who was involved in double murder case would prove the apprehension expressed by this Court that rowdy gangs are active in Tamil Nadu for more than 25 years, while dealing with this HCP with regard to the detention of a goonda and this Court raised about 25 queries about rowdy gangs and history sheeters, which are as follows:

- “(1)How many rowdy gangs/paid killers (Mercenaries) are active in Chennai as well as throughout Tamil Nadu and in India?*
- (2)How many murders have been committed by the rowdy gangs/paid killers in Chennai, Tamil Nadu and throughout India for the past 10 years? (year wise details have to be given)*
- (3)What are all other heinous crimes committed by the rowdy gangs and paid killers in Chennai, Tamil Nadu and throughout India for the past 10 years? (year wise details have to be given)*
- (4)How many cases have been registered against rowdy gangs/paid killers for the past 10 years in Chennai, Tamil Nadu and throughout the nation? (year wise details have to be given)*
- (5)Who are all engaging rowdy gangs/paid killers?*
- (6) Is it a fact that real estate sharks are engaging rowdy gangs/paid killers to grab/encroach the properties of innocent people?*

- (7) *What is the rate of conviction in the cases involving rowdy gangs and paid killers?*
- (8) *Whether in the cases involving rowdy gangs, paid killers etc., the witnesses are made hostile either by winning over the witnesses or by coercion or by threat?*
- (9) *Is it a fact that fake surrenders are made after committing heinous crimes by the criminals/paid killers and the real accused remain outside?*
- (10) *Is it a fact that many political parties appoint persons with muscle power/criminal background as office bearers at every level?*
- (11) *Which are all the political parties which are having criminals/persons with criminal background as office bearers?*
- (12) *Is it a fact that many criminals/rowdies float political parties so that they could escape from police or clutches of law?*
- (13) *Is it a fact that rowdies/history sheeters/paid killers/gangsters are purchasing law degrees from other State law colleges to shield their criminal acts and to avoid police actions?*
- (14) *Whether these rowdy gangs/paid killers have got blessings of some of the police officials?*
- (15) *Whether Centralised criminals data base has been created regarding gangsters/rowdies/paid killers in Chennai, Tamil Nadu and throughout India?*
- (16) *Is there any grade in classifying and dividing rowdy gangs/paid killers/gangsters?*

- (17) *Whether these rowdy gangs/paid killers get any support from religious groups/organizations, extremist groups, communal groups or political parties?*
- (18) *Why the juveniles are getting attracted to gangsters/rowdy groups/paid killers?*
- (19) *Is there any social, economical, religious, ideological or communal background for these juveniles or youngsters getting into these gangs?*
- (20) *Whether any effective and proper steps have been taken to reform the juveniles, who are involved in the crimes along with gangsters, rowdies and paid killers?*
- (21) *What are all the steps taken by the State Government to prevent the youngsters from joining in these gangs as many juveniles/minors themselves are forming part of these gangs?*
- (22) *Why not the State Government form a special wing in police headed by an officer in the rank of DGP to contain organized criminals/paid killers/history sheeters/gangsters and recruit officials and give them special training to deal with them and to investigate those cases effectively?*
- (23) *Why not the State Government come out with a new Act, like "Maharashtra Control of Organized Crimes Act, 1999" (MCOCA) or similar Act as passed by Karnataka viz., "The Karnataka Control of Organized Crimes Act, 2000 (KCOCA)", which would enable the police to deal with and control the Organized Criminals/paid killers effectively?*

(24)How many interstate rowdy gangs, gangsters, paid killers are active in India?

(25)Why not the Union Government pass a legislation like MCOCA or KCOCA to control inter state gangsters/criminals/paid killers?

6. Similarly, two weeks ago, this Court dealt with the case of detention of a rowdy/goonda from Pondicherry and this Court observed that even in respect of the case of the year 2009, charge sheet is yet to be filed against the said goonda and there are nine other pending cases against him. Therefore, this Court observed that it would not be possible without any political clout. Likewise, in Tamil Nadu also, Goondas have got proximity with Police, political leaders and communal leaders. In fact, almost all the political parties have them as office bearers and a few of the MLAs and MPs are with criminal background. In the said 25 queries, this Court has also raised a query about rowdy gangs active in various parts of Tamil Nadu and also the mercenaries operating and indulging in heinous crimes like murder, abduction for money, etc. Out of the said queries, Query No.23 raised by this Court earlier reads as follows:

"(23)Why not the State Government come out with a new Act, like "Maharashtra Control of Organized Crimes Act, 1999" (MCOCA) or similar Act as passed by Karnataka viz., "The Karnataka Control of Organized Crimes Act, 2000 (KCOCA)",

which would enable the police to deal with and control the Organized Criminals/paid killers effectively?"

7.However, a reply affidavit has been filed by the State answering Query No.23 stating that there is no necessity for an enactment like Maharashtra Control of Organised Crimes Act, 1999 and The Karnataka Control of Organised Crimes Act, 2000 in Tamil Nadu as there are no rowdy gangs and anti-social elements, terrorists, etc, as that of Karnataka and Maharashtra, which reads as follows:

"However in the case of our State, we have not witnessed any such terrorist or violent attacks in the scale that had already rocked the State of Maharashtra and Karnataka. Admittedly, we do have Rowdy gangs having criminal antecedence involved in a few major cases of violent and heinous crimes. However, they are neither dreaded nor anti-national or having any terrorist leanings.

Fortunately, we are comparatively free of such terrorist activities or the large presence of violent gangs or syndicates, paid killers mercenaries in Tamil Nadu. The rowdy gangs in the State of Maharashtra and Karnataka were thriving due to the tacit support of the extremist groups present in the neighbouring countries, which is not the case with our State. In view of the above circumstances and fortunate scenario, a new special act like "Maharashtra Control of Organized Crimes Act, 1999" (MCOCA) or Similar Act as passed by Karnataka Viz, "The Karnataka Control of Organized Crimes Act, 2000 (KCOCA)", is not in the need of the Present situation."

8. But the happenings in the State of Tamil Nadu, for the past 25 years, would fortify the impression of this Court that more rowdy gangs are active and anti-social elements are already very vocal in the State. This is proved by the fact that more number of cases are being registered in Tamil Nadu by the National Investigation Agency and more number of terror activities are carried out in Tamil Nadu. Tamil Nadu tops the list of Indian States where Anti terrorist agencies have unearthed modules of Salafi Jihadi Terrorist Organisation Islamic state (IS). Since 2014 the National Investigation Agency has claimed to have arrested 127 ISI sympathisers across the Nation and the highest number of 33 were from Tamil Nadu. In February 2019 one Ramalingam of Thirubuvananthapuram was murdered by religious fanatics for opposing the religious propaganda. In March 2020 a detailed interrogation of 10 suspects of Daish/ISIS module from Karnataka and Tamil Nadu who were recently arrested, has reportedly revealed that they were procuring weapons and material for establishing a base in various parts of South India. NIA has arrested 14 people, after they were handed over to India by Saudi Arabia recently for allegedly attempting to set up terror outfit "Asnarulla" in Tamil Nadu. In February 2020 NIA has made multiple seizures from locations including electronic devices dongles, books professing jihads at 25 locations across Tamil

Nadu and Karnataka in connection with 3 cases of Islamic State recruitment and subversive activities. In October 2018, 4 Maoists were encountered by Kerala Police and all the four were from Tamil Nadu which would prove that more persons from Tamil Nadu are cadres among the Maoists in the tri-state forest region of Tamil Nadu, Kerala and Karnataka. Similarly, Kerala Special Police encountered 6 Maoists since 2016 and 5 hailed from Tamil Nadu. That apart, Naxals are also raising their ugly heads. Recently, near the Kerala Border, a few naxals have been arrested. On January 8, 2020, SSI Wilson was shot down at Kaliyakkavilai check post, while on duty by two religious extremists.

9. Besides, illegal arms are found to be in possession of many persons, including politicians and rowdy gangs. Even a polytechnic student had used a firearm to commit a crime in Pallavaram one year ago. When such is the position, the respondents cannot state that there is no necessity for an enactment like Maharashtra Control of Organised Crimes Act, 1999. If such an Act is brought into force it will give more power to the Police to deal with gangsters and anti-social elements effectively in the interest of the society.

10. Mr. G. Karthikeyan, learned Assistant Solicitor General would submit that

it is a State subject and only the State has to enact a law. He would also state that the Government of India, Ministry of Home Affairs has already formed a committee by order dated 02.03.2020 under the Chairmanship of Professor Dr. Ranbir Singh, Vice Chancellor, National Law University, Delhi. It is seen from the above proceedings that the said committee has been constituted to suggest reforms in the criminal laws of the country to ensure safety and security of the individual, the community and the nation.

11.Since it is the submission of the learned Assistant Solicitor General that the enactment similar to Maharashtra Control of Organised Crimes Act, 1999 and The Karnataka Control of Organised Crimes Act, 2000 is a State subject, the State Government has to come out with a proper reply with regard to the queries raised by this Court as this Court is not convinced with the reply given by the respondents.

12.Post after two weeks. Delink HCP No. 2516 of 2018 from 2527 of 2018.

(N.K.K.,J.) (V.M.V.,J.)
24.08.2020