

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH  
AND  
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No.11 of 2019

Chitrakumari

..Petitioner

-Vs-

- 1.The State of Tamil Nadu  
Represented by its Secretary,  
Prohibition and Excise Department,  
Fort St. George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,  
Coimbatore, Coimbatore District.
- 3.The Inspector of Police,  
Periyanaickenpalayam Police Station,  
Coimbatore, Coimbatore District. ...Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, calling for the records of the detention order dated 10.12.2018 in detention order no. Cr.M.P.No.23/G/2018/E1, on the file of the Second Respondent herein, and quash the same and direct the Respondents herein to produce the body of the detenu Senthil Kumar, S/o. Rajendran, Hindu aged about 38 years who is now confined in Central Prison, Coimbatore before the Hon'ble Court, and set him at liberty.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents : Mr.C.Iyyappa Raj,  
Addl. Public Prosecutor

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the wife of the detenu and challenge is made to the order of detention dated 10.12.2018 made in Cr.M.P. No. 23/G/2018/E1, passed by the second respondent under which the detenu has been branded as a 'Goonda' and detained under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers,

Drug-Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Slum-Grabbers and Video Pirates Act, 1982 (hereinafter referred to as Tamil Nadu Act 14 of 1982).

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the materials available on record.

3.The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4.For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 5 of the grounds of detention are extracted below:

"5..... In similar case registered in Coimbatore District, Negamam Police Station Crime No.197/2014 u/s. 147, 148, 364, 302 IPC, the conditional bail was granted to Thiru.Anthony by the Principal District & Sessions Judge, Coimbatore, vide C.M.P.No.1900/2014 dated 26.06.2014. Hence there is a real possibility of Thiru.Senthilkumar to be released on bail in the case of Coimbatore District, Periyanaickenpalayam Police Station in Crime No.479/2018 u/s 120(b), 147, 148, 341, 506(ii) and 302 IPC. Further, if he comes out on bail, he will indulge in similar activities, which are prejudicial to the maintenance of public peace....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Coimbatore District, Negamam Police Station Crime No.197/2014 for the offences under Sections 147, 148, 364, 302 IPC and bail was granted to one Anthony in C.M.P.No.1900/2014 on 26.06.2014 by the Principal District and Sessions Judge, Coimbatore and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offences under Sections 147, 148, 364, 302 IPC whereas the offences involved in the ground case are under Sections 120(b), 147, 148, 341, 506(ii) and 302 IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No. Cr.M.P.No.23/G/2018/E1 dated 10.12.2018, passed by the second respondent is set aside. The detenu, namely, Senthil Kumar, S/o. Rajendran, aged about 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

mmi

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,  
Prohibition and Excise Department,  
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,  
Coimbatore, Coimbatore District.
3. The Inspector of Police,  
Periyanaickenpalayam Police Station,
4. The Superintendent,  
Central Prison, Coimbatore.
5. The Joint Secretary to Government,  
Public (Law & Order),  
Fort St.George,  
Chennai -600 009.
6. The Public Prosecutor,  
High Court, Madras.

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