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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.38 of 2019

Sathish, M/A 25,
Son of Dhayalan,
No.2/129, Kamaraj Street,
Nair Colony, Ponneri Taluk,
Thiruvallur District.
(Now detained at Central Prison,
Puzhal, Chennai)

.. Petitioner

Vs

1. State of Tamil Nadu, Represented by
The Secretary to Government,
Department of Home, Prohibition and
Excise, Secretariat, Fort St. George,
Chennai.

2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai-600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in Memo No.1111/BCDFGISSSV/2018 passed by the 2nd respondent on 07.12.2018, set aside the same and direct the respondents to produce the detenu Sathish, Son of Dhayalan, aged about 25 years presently confined in the Central Prison, Puzhal-II, Chennai, before this Court and set him at liberty.

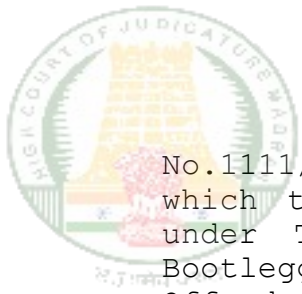
For Petitioner .. Mr.A.Elumalai

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 detenu and challenge is made to the
order of detention dated 07.12.2018 made in



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No.1111/BCDFGISSSV/2018, 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, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual 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 second adverse case and 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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru Sathish is in remand in T12 Poonamallee Police Station Cr.No.1076/2018 and C3 Seven Wells Police Station Cr.No.659/2018 and lodged at Central Prison, Puzhal, Chennai. He has moved a bail application for T12 Poonamallee Police Station Cr.No.1076/2018. The sponsoring authority has stated that the relatives of Thiru Sathish are taking action to take him on bail by filing another bail application in C3 Seven Wells Police Station Cr.No.659/2018 and by filing bail application in T12 Poonamallee Police Station Cr.No.1076/2018 before the appropriate Court. In a similar case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Cr.M.P.No.3177/2018. Hence I infer that there is real possibility of his coming out on bail by filing another bail application in C3 Seven Wells Police Station Cr.No.659/2018 and by filing bail application in T12 Poonamallee Police Station Cr.No.1076/2018 before the appropriate Court, since in similar case bail is granted by the Court after a lapse of time. If



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he comes out on bail, he will indulge in such further activities in future and therefore, there is a compelling necessity to pass an order of detention with a view to prevent him from indulging in such prejudicial activities in future....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Cr.M.P.No.3177/2018 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 offence under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offence involved in the second adverse case is under Section 397 IPC and the offence involved in the ground case are under Sections 341, 294(b) and 397 IPC, which were altered to 341, 294(b), 336, 427, 397 and 506(ii) 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.1111/BCDFGISSSV/2018 dated 07.12.2018, passed by the second respondent is set aside. The detenu, namely, Sathish, Son of Dhayalan, aged about 25 years presently confined in the Central Prison, Puzhal-II, Chennai, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Department of Home, Prohibition and
Excise, Secretariat, Fort St. George,
Chennai.



2. The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai-600 007.

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3. The Superintendent,
Central Prison, Puzhal-II, Chennai.

4. The Joint Secretary to Government,
Public (Law & Order),
Fort. St George,
Chennai - 9.

5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.38 of 2019

RR(CO)
SSM(14/08/2019)