

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.44 of 2019

Jothiswaran, M/A 26,  
Son of Muniyandi,  
No.406, 8<sup>th</sup> Street, B.V.Colony,  
Vyasarpadi, Chennai-600 039.  
(Now detained as 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.1093/BCDFGISSSV/2018 passed by the 2<sup>nd</sup> respondent on 29.11.2018, set aside the same and direct the respondents to produce the detenu Jothiswaran, son of Muniyandi, aged about 26 years present 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 29.11.2018 made in No.1093/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 two adverse cases 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.....It is pertinent to note that in a similar case registered at P-5 M.K.B. Nagar Police Station Cr.No.350/2018 under Sections 341, 294(b), 336, 392, 397 and 506(ii) IPC and Sec. 3 of TNPPDL Act, 1992 bail was granted by the Court of Principal Sessions at Chennai in CrI.M.P.No.5599/2018. In a case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur, in CrI.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail in K-1 Sembium Police Station Crime No.1168/2018, 1171/2018 and 1173/2018 by filing bail application before the appropriate Court since in similarly placed cases bails are granted by Courts after a lapse of time. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Cr.No.350/2018 of P-5 M.K.B. Nagar Police

Station under Sections 341, 294(b), 336, 392, 397 and 506(ii) IPC and Sec. 3 of TNPPDL Act, 1992, in which, bail was granted to the detenu in Crl.M.P.No.5599/2018 by the Court of Principal Sessions at Chennai 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 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offences involved in the first adverse case are under Sections 341, 294(b), 323, 324 & 506(ii) IPC, the second adverse case are under Sections 427, 294(b), 506(ii) IPC read with 3 of TNPPDL Act, 1992 and the ground case are under Sections 341, 294(b), 336, 392, 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.1093/BCDFGISSSV/2018 dated 29.11.2018, passed by the second respondent is set aside. The detenu, namely, Jothiswaran, son of Muniyandi, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-  
Assistant Registrar(CCC)

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.

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

4.The Public Prosecutor,  
High Court, Madras.

H.C.P.No.44 of 2019

RK (CO)  
SP (22/07/2019)



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