

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.06.2019

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.33 of 2019

Kishore Kumar

.. Petitioner

Versus

1.State of Tamil Nadu, rep by its
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-7.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.1110/BCDFGISSSV/2018 passed by the 2nd respondent on 07.12.2018, set aside the same and direct the respondents to produce the detenu Kishore Kumar, son of Rajan, aged about 24 years, presently confined in the Central Prison, Puzhal-II, Chennai before this Court.

For Petitioner: Mr.A.Elumalai

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

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the detenu herein and challenge is made to the order of detention dated 07.12.2018 made in No.1110/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, 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 adverse 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.The sponsoring authority has stated that the relatives of Thiru. Kishore Kumar 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 K2 Ayanavaram Police Station Cr.No.257/2018 and T12 Poonamallee Police Station Cr.No.1076/2018 cases 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 in CrI.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail by filing another bail application....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in M4 Red Hills Police Station Cr.No.369/2018 for the offences under Sections u/s 341, 294(b), 336, 427, 392, 397 & 506 (ii) IPC and bail was granted to the detenu in CrI.M.P.No.3177/2018 by the the Principal District and Sessions Court 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 u/s 341, 294 (b), 336, 427, 392, 397 & 506 (ii) IPC whereas the offences involved in the ground case are under Sections 341, 294(b) & 397 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 Memo No.1110/BCDFGISSSV/2018 dated 07.12.2018, passed by the second respondent is set aside. The detenu, namely, Kishore Kumar, son of Rajan, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.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-7.
- 3.The Superintendent of Central Prison,
Puzhal, Chennai 66.
- 4.The Joint Secretary,
Public(Law & Order), Fort St.George, Chennai.
- 5.The Public Prosecutor
High Court, Madras.

HCP.No.33 of 2019

KK(CO)
CSL/22.07.2019

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