

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.36 of 2019

Syed Yamin Basha @ Yamin Basha .. 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.1109/BCDFGISSV/2018 passed by the 2nd respondent on 07.12.2018, set aside the same and direct the respondents to produce the detainee Syed Yamin Basha @ Yamin Basha, son of Mohammed ismail, aged about 25 years presently confined in the Central prison, Puzhal II, Chennai before this Court.

For Petitioner : Mr.C.C.Chellappan

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.1109/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. Syed Yamin Basha @ Yamin Basha are taking action to take him on bail by filing another bail application in M3 Puzhal Police Station Cr.Nos.709/2018 & 710/2018 and by filing bail application before the appropriate Court. In a similar case registered u/s 341, 294(b), 336, 427, 392 r/w 397 & 506 (ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Thiruvallur in Crl.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail in M3 Puzhal Police Station Cr.Nos.709/2018 and 710/2018 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 r/w 397 & 506 (ii) IPC and bail was granted to the detenu in Crl.M.P.No.3177/2018 by the Principal District

<http://www.judis.nic.in> 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 r/w 397 & 506 (ii) IPC* whereas the offences involved in one of the adverse case in Cr.No.709/2018 are under Sections *u/s 341, 397 & 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.1109/BCDFGISSSV/2018 dated 07.12.2018, passed by the second respondent is set aside. The detenu, namely, Syed Yamin Basha @ Yamin Basha, son of Mohammed ismail, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[M.M.S., J] [M.N.K., J]
04.06.2019

Internet : Yes
Index :No
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To

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

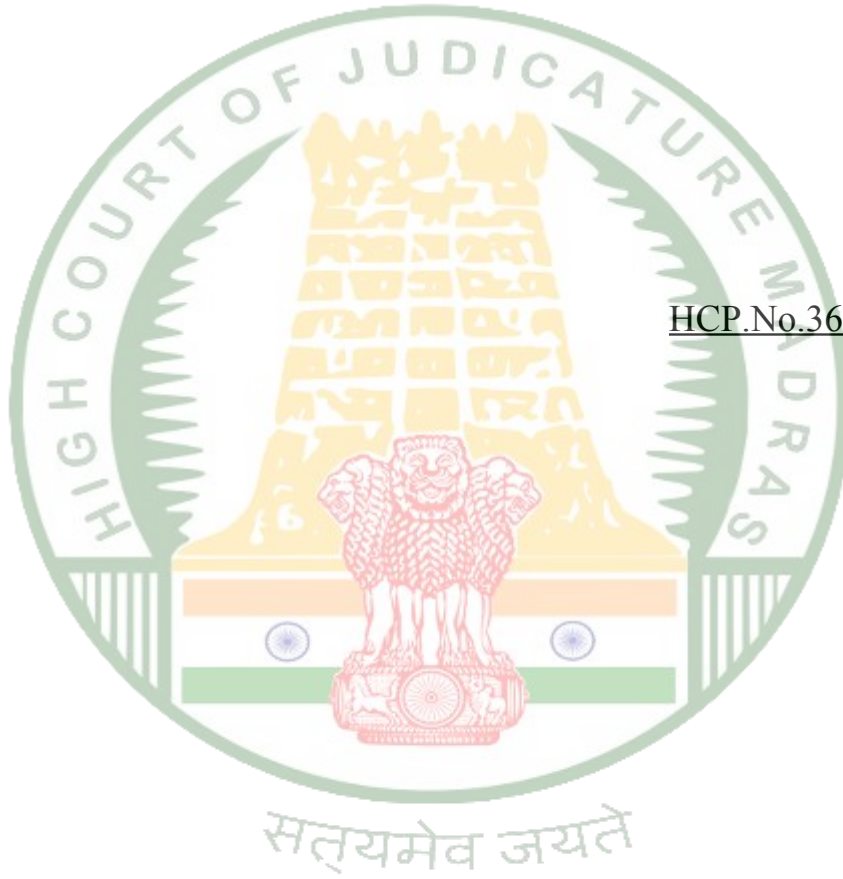
2.The Commissioner of Police,
Greater Chennai
Office of Commissioner of Police,
Vepery, Chennai-7.

3.The Public Prosecutor
High Court, Madras.



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M.M.SUNDRESH, J.,
AND
M.NIRMAL KUMAR, J.,
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