

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

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

H.C.P.NO.108 OF 2019

K.Mahalakshmi

.. Petitioner

-Vs-

1.State of Tamil Nadu rep. By its
Principal Secretary,
Department of Home, Prohibition
and Excise, Secretariat, Chennai - 600 009.

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

3.The State rep. By
The Inspector of Police,
V-5, Thirumangalam Police Station,
Chennai.

.. 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.1138/BCDFGISSSV/2018 dated 15.12.2018 on the file of the 2nd respondent and quash the detention order as illegal and direct the respondents to produce the detainee Selvi.Srividhya, transgender woman, daughter of Kumar, aged about 28 years, detainee now confined at Special Prison for Women, Puzhal, Chennai and set her at liberty.

For Petitioner : Mr.C.Pavendhan

For Respondents: Mr.R.Prathap Kumar
Addl. Public Prosecutor

ORDER

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

The petitioner is the mother of the detainee and challenge is made to the order of detention dated 15.12.2018 made in No. 1138/BCDFGISSSV/2018, passed by the second respondent under

which the detainee 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 cases are totally different. Therefore, the likelihood of the detainee 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:

"5..... The sponsoring authority stated that transgender woman Selvi.Srividhya relatives are taking action to take her out on bail in V 5 Thirumangalam Police Station Crime No.473/2018 by filing another bail application before the appropriate Court. 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 Crl.M.P.No.3177/2018. Hence I infer that there is real possibility of her coming out on bail in V5 Thirumangalam Police Station Crime No.473/2018 by filing another bail application before the appropriate Court, since in similarly places cases bail is granted by the courts after a lapse of time....."

5.From a perusal of the detention order, we find that in one of the adverse cases, the detainee was charged for the major offence under Section 384 IPC whereas in the similar case relied upon, the major offence was under Section 397 IPC. Similarly, in the other adverse case, major offence said to have been involved by the petitioner is under Section 392 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. 1138/BCDFGISSSV/2018 dated 15.12.2018, passed by the second respondent is set aside. The detinue, namely, Selvi.Srividhya, transgender woman, daughter of Kumar, aged about 28 years, is directed to be released forthwith unless her detention is required in connection with any other case.

mmi

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Department of Home, Prohibition
and Excise, Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai, Veppery,
Chennai - 600 007.
3. The Inspector of Police,
V-5, Thirumangalam Police Station,
Chennai.
4. The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.

+1cc to Mr.G.Pavendhan, Advocate, SR.No.45250

H.C.P.No.108 of 2019

Kak(23/07/2019)