

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. 62 of 2019

Amutha

.. Petitioner

Vs

1. The State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, calling for the records relating to the detention order passed by the 2nd respondent pertaining to the order made in Memo No. 992/BCDFGISSSV/2018 dated 29.10.2018 in detain the detenu under 2(f) of Tamil Nadu Act 14 of 1982, as Goonda and quash the same and direct the respondent to produce the detenu Vinothkumar @ Kulla, Son of Sivaraman aged about 23 years, who is detained at Centeal Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.G.Nirmalkrishnan

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

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

The petitioner is the mother of the detenu and challenge is made to the order of detention dated 29.10.2018 made in BCDFGISSSV No.992/2018, 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 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:

"5..... It is pertinent to note that in a case registered at S-15 Selaiyur Police Station Cr.No.47/2018 under Sections 341, 294(b), 392, 397, 336, 427 and 506(ii) IPC bail was granted by the Court of Principal District and Sessions Judge of Kancheepuram at Chengalpattu in Crl.M.P.No.336/2018. Hence I infer that it is very likely of his coming out on bail in J-11 Kannaki Nagar Police Station Crime No.627/2018 since in similarly placed cases bail is granted by courts after a lapse of time. If he comes out on bail, he will indulge in similar 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.47/2018 under Sections 341, 294(b), 392, 397, 336, 427 and 506(ii) IPC bail was granted by the Court of Principal District and Sessions Judge of Kancheepuram at Chengalpattu in Crl.M.P.No.336/2018 and therefore, there is a real possibility of the detenu coming out on bail in the ground case 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), 392, 397, 336, 427 and 506(ii) IPC whereas the offences involved in the ground case are under Sections 341, 294(b), 352, 336, 392 r/w 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 Memo No. 992/BCDFGISSSV/2018 dated 29.10.2018, passed by the second respondent is set aside. The detenu, namely, Vinothkumar @ Kulla, Son of Sivaraman aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To:-

1. The Secretary to Government
Home, Prohibition and Excise Department,
Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai.
3. The Superintendent,
Central Prison, Puzhal, 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. 62 of 2019

RGN(CO)
SSM(17/07/2019)

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