

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 10.06.2019

CORAM

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

H.C.P.No.71 of 2019

Sardar

..Petitioner

Vs

1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Fort St. George,  
Chennai-600 009.

2.The Commissioner of Police,  
Greater Chennai,  
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 entire records in connection with the order of detention passed by the second respondent dated 08.12.2018 in BCDFGISSSV No.1125 of 2018 against petitioner's nephew, the detenu herein, now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Thiru.Sabeer, S/o.Dowlath Basha, aged about 24 years before this Court and set him at liberty.

For Petitioner .. Mr.A.Nirmal Kumar

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 uncle of Thiru.Sabeer, S/o.Dowlath Basha, aged 24 years, who is the detenu. The detenu has been detained by the second respondent by his order in No.1125/BCDFGISSSV/2018 dated 08.12.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3.Though the learned counsel for the petitioner raised several grounds, his main submission is that the detaining authority has expressed subjective satisfaction over the real possibility of the detenu coming out on bail based on the bail order in a similar case and copy of the said bail order was not furnished to the detenu in the booklet and there is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention and hence it is vitiated.

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..... Further, in a similar case, registered at F-1 Chintadripet P.S. Cr.No.809/2014, u/s. 147, 148, 341, 307 IPC @ 302 IPC bail was granted by the Principal Sessions Judge at Chennai in Crl.M.P.No.17395/2014. In a 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, Tiruvallur in Crl.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail in T-12 Poonamallee Police Station Crime Nos.1328/2018 and 1332/2018 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.As seen from the extracted passage, the subjective satisfaction expressed by the detaining authority that there is real possibility of the detenu coming out on bail in the case in which he was on remand in the adverse case and ground case is based on the bail orders in Crl.M.P.No.3177/2018 and Crl.M.P.No.17395/2014 in similar cases in Crime Nos.369/2018 and 809 of 2014. Copies of the said orders are not found in the booklet supplied to the detenu. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention. Therefore, non-furnishing of the bail orders in similar cases prevented the detenu from making effective representation and the impugned detention order cannot be sustained.

6. Accordingly, the impugned detention order passed by the 2<sup>nd</sup> respondent, detaining the detenu, namely, Thiru.Sabeer, S/o.Dowlath Basha, aged 24 years, made in No.1125/BCDFGISSSV/2018 dated 08.12.2018 is quashed and the Habeas Corpus Petition is allowed. The above named detenu, who is detained in the Central Prison, Puzhal, Chennai is ordered to be set at liberty forthwith, unless his custody 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,  
Secretariat,  
Fort St.George,  
Chennai-600 009.
- 2.The Commissioner of Police,  
Greater Chennai,  
Vepery, Chennai-600 007.
- 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.71 of 2019

LN(CO)

RRS(19/07/2019)

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