

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.142 of 2019

G. Priyanka

.. Petitioner

Vs

1.The Secretary to Government,
State of Tamil Nadu
Represented by the Secretary, Home,
Prohibition and Excise Department,
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, calling for the records in connection with the order of Detention passed by the second respondent dated 08.12.2018 in Memo No.1122/BCDFGISSSV/2018 against the petitioner's husband Babu @ George Vijayababu, male, aged about 30 years, S/o Prakash, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this court and set him at liberty.

For Petitioner .. Mr.S. Senthilvel
For Respondents.. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The petitioner is the wife of Babu @ George Vijayababu, male, aged about 30 years, who is the detenu. The detenu has been detained by the second respondent by his order in

No.1122/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. The Detaining Authority namely, the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already came to adverse notice in one case and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to Paragraph No.4 of the grounds of detention and would submit that the detenu is in custody in connection with the adverse case as well as in the ground case and in order to derive the subjective satisfaction as to the real and imminent possibility in coming out on bail and indulging in activities which are prejudicial to the public order and peace, reliance has been placed on two cases in F-1 Chintadripet Police Station in Cr.No.809 of 2014 and M4 Redhills Police Station in Cr.No.369 of 2018 and insofar as Cr.No.809 of 2014 is concerned, the Principal Sessions Judge, Chennai has granted bail in CrI.M.P.No.17395 of 2014 and insofar as the M-4 Redhills Poilce Station, Cr.No.369 of 2018 is concerned, the Principal Sessions Judge, Thiruvallur has granted bail in CrI.M.P.No.3177 of 2018 and in the said case, the concerned accused was not having any antecedents and however in the present case on hand, the detenu is having adverse case under Section 302 IPC and the ground case for the offences under Sections 147, 148, 341, 294(b), 336, 397 and 506(ii) IPC and as such, the similar cases relied on by the Detaining Authority cannot said to be same and therefore, the subjective satisfaction derived by the Detaining Authority in that regard is vitiated and hence prays for quashment of the same.

5.Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and hence prays for dismissal of this petition.

6. As rightly pointed out by the learned counsel for the petitioner, the two similar cases relied on by the Detaining

Authority cannot said to be similar cases for the reason that in the first case, the Principal Sessions Judge has granted bail and insofar as the second case is concerned, the bail is granted to the concerned accused, who did not have any antecedents and however in the case on hand, the detenu is having antecedents in the form of 302 IPC and as such, in both cases, there is a likelihood of the detenu in coming out on bail and indulging in activities which are prejudicial to the public order and peace is involved and therefore, the subjective satisfaction derived by the Detaining Authority is vitiated and hence the impugned order of detention warrants interference.

7. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in Memo No.1122/BCDFGISSSV/2018 dated 08.12.2018 is set aside and the detenu namely, Babu @ George Vijayababu, aged about 30 years, who is confined at Central Prison, Puzhal II, Chennai is set at liberty forthwith unless his detention is required in connection with any other case proceedings.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
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.142 of 2019

rj(co)
nr 17/07/2019



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