

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.209 of 2019

S. Shankar .. Petitioner

Vs

1. The State of Tamil Nadu  
rep by the Secretary to the Government,  
Prohibition & 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 pertaining to the Memo No.1156/BCDFGISSSV/2018 dated 22.12.2018 on the file of the 2<sup>nd</sup> respondent herein and set aside the same and direct the respondents to produce the petitioner M. Shankar, S/o T. Selvlaraj, aged 43 years now confined in the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner.. Mr.C.K.M. Appaji

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 detenu viz., M. Shankar, S/o T. Selvlaraj, aged 43 years and has been detained by the second respondent by his order in No.1156/BCDFGISSSV/2018 dated 22.12.2018 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 2<sup>nd</sup> 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. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that though there was no bail application pending in Crime Nos.141, 407 and 586 of 2018, the detaining authority has stated that the relatives of the detenu were taking steps to file bail application, in which case there was real possibility of the detenu coming out on bail. The learned counsel pointed out that to arrive at such a conclusion, there was no material placed before the detaining authority at all.

5. 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 remand in K-2 Ayanavaram Police Station in Cr.Nos141, 407 and 586/2018 and he has moved bail application for before the Principal Sessions Judge, Chennai in CrI.M.P.No.22152/2018 and the same is pending. 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 a case in Cr.Nos.141 and 407 of 2018 on the file of K-2 Ayanavaram Police Station and in the second adverse case in Cr.No.407 of 2018, co-accused was granted bail by the Court of Principal Sessions, Chennai in CrI.M.P.No.13574 of 2018.

6. The learned Additional Public prosecutor would submit that the relatives of the detenu were taking steps to file bail application seeking bail in connection with the case in Crime Nos.141, 407 and 586/2018.

7. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, there was no application filed by the detenu seeking bail in Crime Nos.141/2018, 407/2018 and 586/2018 on the file of K-2 Ayanavaram Police Station. Though it is alleged that his relatives were taking steps to file an application for bail, there were no materials available before the detaining authority to prove the same. Full details as to who are those relatives, who were taking steps to file bail application also have not been mentioned. Thus, in our considered view, without making proper application of mind relating to these facts, the detaining authority has passed the detention order. Therefore, we are inclined to set aside the same.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in Memo No.1156/BCDFGISSSV/2018 dated 22.12.2018 is set aside and the detenu namely, Shankar, S/o Selvaraj, aged about 43 years, who is confined at Central Prison, Puzhal, Chennai is set at liberty forthwith unless his detention is required in connection with any other case proceedings.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. THE SECRETARY TO THE GOVERNMENT,  
STATE OF TAMIL NADU,  
PROHIBITION & 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 THE GOVT PUBLIC LAW AND ORDER,  
FORT SAINT GEORGE, CHENNAI-9.
5. THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

H.C.P.No.209 of 2019

A.SK(11/07/2019)