

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.160 of 2019

L. Sarathkumar

.. Petitioner/Brother of detenue

Vs

1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 009

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

..

Respondents

Prayer: Habeas Corpus 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 21.12.2018 in Memo No.1151/BCDFGISSSV/2018 against the petitioner's brother Sanjay @ Sanjaykumar, S/o Lakshmanan, aged about 23 years, who is confined at Central Prison, Puzhal, 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.V. Parthiban

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 brother of detenu Sanjay @ Sanjaykumar, male, aged about 23 years, S/o aged about 24 years. The detenu has been detained by the second respondent by his order in No.1151/BCDFGISSSV/2018 dated 21.12.2018, 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 come 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. 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 remand in J-8 Neelankarai Police Station in Cr.No.1798/2018 and he has moved bail application for before the Principal District and Sessions Judge at Chengalpattu in CrI.M.P.No.5552/2018 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.No.809 of 2014 on the file of F-1 Chintadripet Police Station in Cr.No.809 of 2014 and in that case, the Principal Sessions Judge, Chennai has granted bail in CrI.M.P.No.17395 of 2014. The similar case relied on by the authority was registered for the offences under Sections 147, 148, 341, 302 IPC r/w 149 IPC, whereas the offences involved in the ground case are under Sections 147, 148, 341, 294(b) 302 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.

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 case relied on by the Detaining Authority cannot said to be similar case for the reason that in the case on hand, the offence involved is under sections 147, 148, 341, 294(b) 302 and 506(ii) IPC and 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.

7. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in Memo No. 1151/BCDFGISSSV/2018 dated 21.12.2018 is set aside and the detenu namely, Sanjay @ Sanjaykumar aged about 23 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 VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 009

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

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.160 of 2019

mr(co)
nr 18/07/2019



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