

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.194 of 2019

R. Devi ... Petitioner/Sister of the detenu

Vs

- 1.State of Tamil Nadu,
Rep.By,The Secretary to the government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai- 600 009.
- 2.The District Collector and
The District Magistrate,
Kancheepuram District,
Kancheepuram ... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in connection with the order of detention passed by the second respondent dated 29.12.2018 in Memo No.105/BCDFGISSSV/2018 against the petitioner's brother Sankarn @ Sivasankaran, male, aged about 32 years, S/o Saravanan who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the body of the detenu before this Court and set her 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 sister of the detenu viz., Sankarn @ Sivasankaran, male, aged about 32 years, S/o Saravanan and he has been detained by the second respondent by his order in Memo 105/BCDFGISSSV/2018 dated 29.12.2018 holding him to be a "BOOTLEGGER", as contemplated under the provisions of 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 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. 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 No.533/2018, 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.

4. The learned Additional Public prosecutor would submit that the relatives of the detenu were taking steps to file bail application in connection with the case in Crime No.533/2018.

5. 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 No.533/2018 on the file of Mamallapuram 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 show that the relatives were taking steps to file application seeking bail. 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.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 29.12.2018 in Memo No. 105/BCDFGISSSV/2018 passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sr

To

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

2.The District Collector and
The District Magistrate,
Kancheepuram District,
Kancheepuram

3.The Superintendent of Central Prison,
Puzhal, Chennai. सत्यमेव जयते

4.The Public Prosecutor,
High Court, Madras.

A.SK(16/07/2019)

HCP No.194 of 2019