

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.258 of 2019

Sarath Kumar @ Sarath Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort Saint George, Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai,
O/o. Commissioner of Police,
(Goondas Section),
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 records of the 2nd respondent pertaining to the order made in Memo No.1146/BCDFGISSV/2018 dated 21.12.2018, in detaining the detenu under the Tamil Nadu Act 14 of 1982, as a Bootlegger and quash the same and direct the respondents to produce the detenu, namely, Sarath Kumar @ Sarath, S/o.Chandran detained at the Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner .. Mr.Adinarayana Rao

For Respondents.. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner Sarath Kumar @ Sarath, S/o.Chandran is the detenu. The detenu has been detained by the second respondent by his order in No.1146/BCDFGISSV/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 main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offences in the second adverse case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

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..... In a similar 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 CrI.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail in M3 Puzhal Police Station Cr.No.1982/2017 and another bail application in M3 Puzhal Police Station Crime No.728/2018 before the appropriate court, since in similar case bail is granted by the court after a lapse of time. If he comes out on bail, he will indulge in such further activities in future and therefore there is a compelling necessity to pass an order of detention with a view to prevent him from indulging in such prejudicial activities in future....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Cr.No.369/2018 under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC, bail was granted by the Court of Principal District and Sessions Judge, Tiruvallur in CrI.M.P.No.6622/2018 and therefore, there is a real possibility of the detenu coming out on bail in the second adverse case in Crime No.1982/2017 case and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offences under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offences involved in the second adverse case are under

Sections 341, 324 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.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No. 1146/BCDFGISSSV/2018 dated 21.12.2018, passed by the second respondent is set aside. The detenu, namely, Sarath Kumar @ Sarath, S/o.Chandran aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort Saint George, Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai,
O/o.Commissioner of Police,
(Goondas Section),
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.

+1cc to Mr.Adinarayana Rao, Advocate Sr.46369

H.C.P.No.258 of 2019

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srg 11/07/2019