

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2019

Coram

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

H.C.P.No.286 of 2019

Mohammed Atif @ Balaji

.. Petitioner

Vs

1. The Commissioner of Police,
The Office of the Commissioner of Police,
Greater Chennai, Egmore.
Chennai -600 008.

2. The Government of Tamil Nadu,
rep by its Secretary to Government,
Home, Prohibition and Excise Department
Chennai - 600 009

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, calling for the records of the first respondent culminating with the order of detention bearing BCDFGISSSV No.11/2019 dated 12.01.2019 passed by the first respondent herein detaining petitioner's mother-in-law Tmt. Amudha, W/o Raju u/s Act XIV of 1982 and quash the same and direct the respondents to produce the body of the person of the detainee Tmt.Amudha W/o Raju, female, aged about 46 years before this Court, now detained in the Special Prison for Women, Puzhal, Chennai.

For Petitioner .. Mr.T.K. Rajasekaran

For Respondents.. Mr.R. Prathap Kumar
Addl. Public Prosecutor

ORDER

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

The petitioner is the Son-in-law of the detenu Tmt. Amudha, W/o Raju, aged about 46 years. The detenu has been detained by the first respondent by his order in No.11/BCDFGISSSV/2019 dated 12.01.2019, holding her 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 1st 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 her 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 cases in Cr.Nos.485 and 486 of 2018 before the Metropolitan Magistrate for exclusive trial of CCB Cases and CB CID Metro cases, Chennai in CrI.M.P.No.7272/2018 and 7301/2018 respectively and both the bail applications were dismissed on 03.01.2019 and she has moved another bail application for Central Crime Branch in Cr.Nos.485 and 486 of 2018 before the Court of Principal Sessions, Chennai in CrI.M.P.Nos.390/2019 and 679 of 2019 respectively and both the applications are pending. In a similar case registered in Central Crime Branch in Cr.No.173/2017 u/s 465, 467, 468, 471, 474, 420 and 12(1) (d) of Passport Act 1967 bail was granted by the Court of Principal Sessions, Chennai in CrI.M.P.No.10891/2017. In the present case on hand, the detenu is having adverse case

under Sections 406, 420 IPC @ 406, 420 r/w 34 IPC and 10 r/w 24 of Emigration Act, 1983 and the ground case for the offences under Sections 147, 148, 341, 294(b), 302 and 506 (ii) IPC and as such, the similar case 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. R. Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the first 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 first respondent in Memo No. 11/BCDFGISSSV/2019 dated 12.01.2019 is set aside and the detainee namely, Tmt. Amudha, female, aged about 46 years, who is confined at Special Prison for Women, Puzhal, Chennai is set at liberty forthwith unless her 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 Commissioner of Police,
The Office of the Commissioner of Police,
Greater Chennai, Egmore.
Chennai -600 008.

2. The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department
Chennai - 600 009

3. The Superintendent,
Special Prison for Women, Puzhal, Chennai.

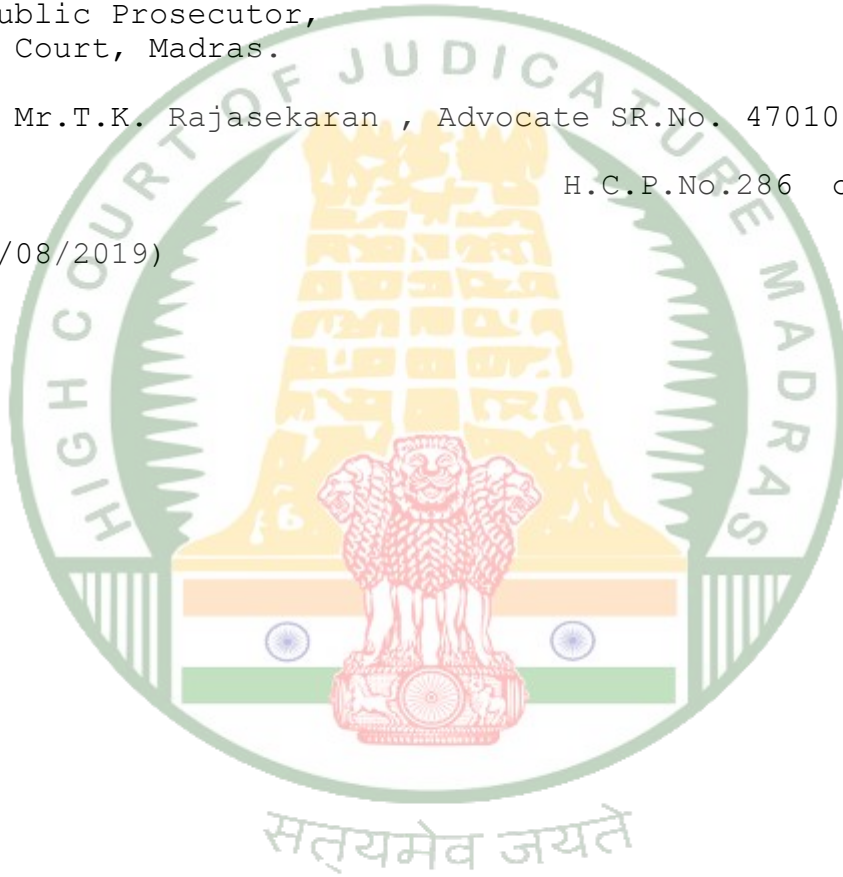
4. The Joint Secretary to Government,
Public (Law and order) Fort. St. George, Chennai 9.

5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. T.K. Rajasekaran, Advocate SR.No. 47010

H.C.P.No.286 of 2019

A.SK(08/08/2019)



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