

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.263 of 2019

Kumar ... Petitioner

Vs

1. State Rep.by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Magistrate and District Collector,
Tiruppur District
Tiruppur. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in Cr.M.P.No.12/Goonda/2018 dated 25.12.2018 on the file of the second respondent and quash the detention as illegal and direct the respondents to produce the detenu, Karthik @ Pallan Karthik, S/o.Kumar, aged 27 years now confined in Central Prison, Coimbatore, before this Court and set him at liberty forthwith.

For Petitioner .. Mr.S.Rajanikanth
For Respondents .. Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

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

The petitioner is the father of Karthik @ Pallan Karthik, S/o.Kumar, aged 27 years, who is the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P.No.12/Goonda/2018 dated 25.12.2018, 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. Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focused his argument on the ground that though the detaining authority has observed that the bail petitions filed by the detenu in the third adverse case in Crime No.550 of 2018 and the ground case in Crime No.607 of 2018 have been dismissed and he has not filed further bail petitions for the said cases, he inferred that the detenu may come out on bail in the said cases. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention and therefore, subjective satisfaction expressed by the detaining authority is vitiated.

4. For appreciating the contentions raised by the learned counsel for the petitioner, relevant averments in para 5 of the grounds of detention are extracted below:

"5. I am aware that Thiru. Karthik alias Pallan Karthik now lodged at Central Prison, Coimbatore as a remand prisoner in Kangayam Police Station Crime No.550/2018 under Section 392 Indian Penal Code and Crime No.607/2018 under Sections 392, 506(ii) Indian Penal Code cases and also aware that he has moved bail petitions in the above said cases before the Judicial Magistrate, Kangayam and the same was dismissed on 10.12.2018 in Criminal Miscellaneous Petition Numbers 3544/2018 and 3543/2018 respectively. However, it is real possibility coming out bail in the above cases in future by filing another bail petitions before the concerned courts. Because, I am aware the similar case registered in Erode District, Erode Taluk Police Station Crime No.222/2017 under Section 392 Indian Penal Code, the bail was granted to the arrested accused Boopathy alias Prabhakaran in Criminal Miscellaneous Petition Number 2568/2017 dated 11.07.2017 by the order of the Judicial Magistrate No.1, Erode....."

5. The detaining authority, in para 5 of the grounds of detention, while considering the real possibility of the detenu coming out on bail in the cases in which he was on remand, has referred to the remand of the detenu in the adverse cases and

the ground case and proceeded further to observe that the bail petitions filed by the detenu in the third adverse case and ground case came to be dismissed. The detaining authority has not mentioned whether further bail petitions have been moved by the detenu or his relatives in respect of the third adverse case and ground case. Therefore, there is no material to show that further bail petitions have been moved by the detenu or his relatives in respect of the third adverse case and ground case. Therefore, the subjective satisfaction arrived by the detaining authority is not supported by any material and it vitiates the order of detention. On this ground alone, the order of detention is vitiated and liable to be set aside.

6. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely Karthik @ Pallan Karthik, S/o. Kumar, aged 27 years, made in Cr.M.P.No.12/Goonda/2018 dated 25.12.2018, is quashed and the habeas corpus petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody 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,
Fort St.George, Chennai-600 009.
2. The District Magistrate and District Collector,
Tiruppur District, Tiruppur.
3. The Superintendent, सतयमेव जयते
Central Prison, Coimbatore.
4. The Joint Secretary To Government,
Public(Law & Order), Fort St.George.
Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

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PPA(CO)

RMP(05/07/2019)