

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

Coram

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

H.C.P. No. 319 of 2019

Logeshwaran @ Logesh

... Petitioner

-vs-

1.The State of Tamil Nadu
rep. By its Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police/Detaining Authority,
Greater Chennai, Chennai ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the 2nd respondent in No.1133/BCDFGISSSV/2018 dated 11.12.2018 and quash the same thereby direct the respondents to produce the detenu Mr.Logeshwaran @ Logesh, Son of Arumugam, aged 23 years lodged in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set the detenu at liberty.

For Petitioner : Mr.V.Jeevagiridharan

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

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ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner Mr.Logeshwaran @ Logesh is the detenu. The detenu has been detained by the second respondent by his order in No.1133/BCDFGISSSV/2018 dated 11.12.2018, 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 offence in the first, second and third adverse cases and ground 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 it is very likely of his coming out on bail in M4 Red Hills Police Station Cr.No.660/2018 and also there is real possibility of his coming out on bail in K4 Anna Nagar Police Station Cr.Nos.395/2018, 751/2018 and P6 Kodungaiyur Police Station Cr.No.1193/2018 by filing bail application 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.3177/2018 and therefore, there is a real possibility of the detenu coming out on bail in the first, second and third adverse cases and ground case in Crime Nos.395/2018, 751/2018, 1193/2018 and 660/2018 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 three adverse cases and ground case are 392 IPC, 420 and 379 IPC, 379 IPC and 341, 294(b), 427, 336, 394 r/w 397 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 No.1133/BCDFGISSSV/2018 dated 11.12.2018, passed by the second respondent is set aside. The detenu, namely, Logeshwaran @ Logesh aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To:

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police/Detaining Authority,
Greater Chennai, Chennai
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

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srg 17/07/2019