

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. 320 of 2019

Aayishabanu

... Petitioner

-vs-

1.State Rep. by Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9

2.The Commissioner of Police,
Greater Chennai,
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in BCDFGISSSV No.432/2018 dated 23.6.2018 on the file of the second respondent and quash the detention as illegal and direct the respondents to produce the detenu Prabhu @ Sadiq S/o. Masilamani, aged 30 years now confined in Central Prison - I, Puzhal, Chennai before this Court and set him at liberty.

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 friend of the detenu and challenge is made to the order of detention dated 23.06.2018 made in BCDFGISSSV No.432/2018, passed by the second respondent under which the detenu has been branded as a 'Goonda' and detained under The 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 (hereinafter referred to as Tamil Nadu Act 14 of 1982).

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have perused the materials available on record.

3.The main argument of the learned counsel appearing for the petitioner is that the cases relied on by the detaining authority is not similar in nature and the offences in the adverse cases and ground case put together are totally different and the similar cases relied upon are only for few cases. 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.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar cases registered in Crime Nos.1187 of 2017 and 180 of 2018 for the offence under Sections 379 IPC and 341, 294(b), 323, 392, 397, 336, 427 and 506(ii) IPC and bail was granted in Crl.M.P.Nos.1787/2017 and 5732/2018 by the lower Courts and therefore, there is a real possibility of the detenu coming out on bail in all the nine adverse cases and ground case and indulge in such activities prejudicial to the maintenance of public order. The similar cases relied on by the authority was only for few cases and the offence in all the adverse cases and ground case put together are different. 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 BCDFGISSSV No.432/2018 dated 23.6.2018, passed by the second respondent is set aside. The detenu, namely, Prabhu @ Sadiq S/o. Masilamani, aged 30 years , is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

Assistant Registrar(CS VII)

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,
Greater Chennai,
Chennai

3.The Superintendent,
Central Prison, Puzhal, Chennai.

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 320 of 2019

BP(CO)
SP(11/07/2019)



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