

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. 342 of 2019

S.Kalaiselvi

... Petitioner

-vs-

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai - 9.

2.The District Magistrate & District Collector,
Namakkal District,
Namakkal. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 21.12.2018 on the file of the second respondent herein made in proceedings Memo C.M.P.No.21/Goonda/2018/M1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Dhanapal S/o. Perumal, aged 33 years before this Hon'ble Court and set the petitioner's husband at liberty from detention, now petitioner's husband detained at Central Prison, Salem.

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For Petitioner : Mr.W.Camyles Gandhi

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 wife of the detenu - Dhanapal S/o. Perumal. The detenu has been detained by the second respondent by his order in C.M.P.No.21/Goonda/2018/M1 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. Though the order of detention is challenged on various grounds, the main submission of the learned counsel for the petitioner is that the detaining authority, in para 3 of the grounds of detention, while expressing subjective satisfaction with regard to the real possibility of the detenu coming out on bail in the cases in which he was on remand, has observed that the detenu has not filed bail petition in respect of the ground case in Crime No.477 of 2018 on the file of Thiruchengode Police Station but the relatives of the detenu are taking steps to take him on bail in the ground case. But the same is not supported by any material. Hence the subjective satisfaction expressed is vitiated.

4. The detaining authority, after referring to the remand of the detenu in the ground case, has chosen to observe that the detenu has not filed bail petition in the ground case but his relatives are taking steps to take him out on bail in the said case. But the same is not supported by any material. In the affidavit filed in support of the H.C.P., it is specifically averred that no application for bail was moved on behalf of the detenu in the ground case as well as third adverse case. In such circumstances, the observation of the detaining authority that the detenu has not moved bail petition in the ground case but his relatives are taking steps to take him out on bail is not supported by any material. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention. Hence the subjective satisfaction expressed by the detaining authority in this regard in para 3 of the grounds of detention is vitiated. On this ground alone, the order of detention is vitiated and liable to be set aside.

5.In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo C.M.P.No.21/Goonda/2018/M1 dated 21.12.2018, passed by the second respondent is set aside. The detenu, namely, Dhanapal S/o. Perumal, aged 33 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 District Magistrate & District Collector,
Namakkal District,
Namakkal.
- 3.The Superintendent,
Central Prison,Salem.
- 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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