

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. 352 of 2019

Anusiya

... Petitioner

-vs-

1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai - 600 009.

2.The District Collector & District Magistrate,
Cuddalore District,
Cuddalore.

... 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 05.02.2019 on the file of second respondent herein made in proceedings C3/D.O./08/2019, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Suresh, S/o.Ayyasamy, aged 37 years before this Hon'ble Court and set petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner : Mr.R.Sasikumar

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 Suresh, S/o.Ayyasamy, aged 37 years, who is the detenu. The detenu has been detained by the second respondent by his order in C3/D.O./08/2019, dated 05.02.2019, holding him to be a "Bootlegger", as contemplated

under Section 2(b) 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.

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 ground case have been dismissed two times and he has not filed another bail petition for the said case, he inferred that the detenu may come out on bail in the ground case. 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 6 of the grounds of detention are extracted below:

"6.I am aware that Thiru.Suresh S/o.Ayyasamy has been remanded in judicial custody upto 08.02.2019 and lodged at Central Prison, Cuddalore in connection with Vridachalam P.E. Wing in Cr.No.67/2019 under Section 4 (1)(aaa) & 4(1-A), 14A (Transport) of Tamil Nadu Prohibition Act. I am also aware that he has already filed a bail application before the court of District Sessions Judge, Cuddalore on 28.01.2019 and the same was dismissed on 30.01.2019 in CrI.M.P.No.639/2019. Further, he filed another bail application before the same court on 30.01.2019 and the same was also dismissed on 04.02.2019 in CrI.M.P.No.738/2018 (copy enclosed). In a similar case in Vridhachalam P.E. Wing, Cr.No.581/2017 bail was granted to the accused (Sivakumar) by the Court of District Sessions Judge, Cuddalore in CrI.M.P.No.4549/2017 on 27.10.2017. Hence, I infer that there is likelihood of his (Thiru.Suresh) coming out on bail in Vridhachalam P.E.Wing in Cr.No.67/2019 by filing another bail application before the concerned court, since bails is granted by the competent courts in such cases....."

5.The detaining authority, in para 6 of the grounds of detention, while considering the likelihood 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 ground case came to be dismissed. The detaining authority has not mentioned whether another bail

petition has been moved by the detenu or his relatives in respect of the ground case. Therefore, there is no material to show that another bail petition has been moved by the detenu or his relatives in the ground case. Therefore, the subjective satisfaction arrived by the detaining authority is not supported by 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. In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O./08/2019, dated 05.02.2019, passed by the second respondent is set aside. The detenu, namely, Suresh, S/o.Ayyasamy, aged 37 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.
 - 2.The District Collector & District Magistrate,
Cuddalore District, Cuddalore.
 - 3.The Superintendent,
Central Prison, Cuddalore.
 - 4.The Public Prosecutor,
High Court, Madras.
 5. The Joint Secretary to Government,
Public (law & Order), Fort Saint George, Chennai 9
- +1cc to Mr.R.Sasikumar, Advocate, S.R.No. 47382

H.C.P. No. 352 of 2019

PA(CO)
GN(25/07/2019)