

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

Coram

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

H.C.P. No. 361 of 2019

Naseera Begam ... Petitioner

-vs-

- 1.The Government of Tamil Nadu
Rep. By its Secretary,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in detention order Memo No.1092/BCDFGISSSV/2018 dated 29.11.2018 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner's son Rafiq @ Solison Rafiq @ Mohamed Imran, aged about 22 years, the detenu now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.Kannan

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 mother of Rafiq @ Solison Rafiq @ Mohamed Imran, Son of Mohamed Samee, aged 22 years, who is the detenu. The detenu has been detained by the second respondent by his order in No.1092/BCDFGISSSV/2018 dated 29.11.2018, holding 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, learned counsel for the petitioner pointed out that the detenu was involved in four adverse cases and though the detaining authority has expressed his awareness that the detenu is in remand in the first and second adverse cases and ground case and he has not moved any bail application in respect of those cases, there is no reference about the bail application in respect of the third adverse case in Crime No.507 of 2018 on the file of P1 Pulianthope Police Station. Learned counsel would further submit that there is no mention about the bail application in respect of the third adverse case in the grounds of detention and there is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention. Therefore, the subjective satisfaction expressed by the detaining authority is vitiated.

4. A perusal of the grounds of detention would go to show that the details of the bail application in respect of the third adverse case have not been mentioned in the grounds of detention. Therefore, non-furnishing of the details in respect of the above adverse case prevented the detenu from making effective representation. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in proceedings No.1092/BCDFGISSSV/2018 dated 29.11.2018, passed by the second respondent is set aside. The detenu, Rafiq @ Solison Rafiq @ Mohamed Imran, Son of Mohamed Samee, aged 22 years, is directed

to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mmi/ssm
To:

- 1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
- 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. 361 of 2019

A.SK(29/07/2019)

सत्यमेव जयते

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