

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.379 OF 2019

Arulselvi

.. Petitioner

-Vs-

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

2. The Commissioner of Police,
Greater Chennai,
Chennai-600 004.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in connection with the order of detention passed by the second respondent herein dated 24.12.2018 in BCDFGISSSV No.1158/2018 of the petitioner's husband detenu Ilaiyaraja, M/A 33, son of Sengamalai, who is confined at Central Prison, Puzhal and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Ms.G.Bala and Daisy

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 and challenge is made to the order of detention dated 24.12.2018 made in BCDFGISSSV No.1158/2018, 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 are not similar in nature and the offence in the adverse case 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.I am aware that Thiru Ilaiyaraja is in remand in S6 Sankar Nagar Police Station Cr.Nos.991/2018 and 996/2018 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for S6 Sankar Nagar Police Station Cr.Nos.991/2018 and 996/2018 so far. The sponsoring authority stated that Thiru.Ilaiyaraja's relatives are taking action to take him out on bail in S6 Sankar Nagar Police Station Cr.Nos.991/2018 and 996/2018 by filing bail application before the appropriate court. In a similar case registered u/s 302 IPC @ 302, 457 and 380 IPC in J5 Shastri Nagar Police Station Cr.No.256/2017 bail was granted by the Court of Principal Sessions, Chennai in CrI.M.P.No.4043/2017. Similarly, in a case registered u/s 341, 294(b), 336, 323, 427, 397 and 506 (ii) IPC in R2 Kodambakkam Police Station Cr.No.324/2018 bail was granted by the Court of Principal Sessions, Chennai, in CrI.M.P.No.8608/2018. Hence I infer that there is real possibility of his coming out on bail in S6 Sankar Nagar Police Station Cr.Nos.991/2018 and 996/2018 cases by filing bail application before the appropriate court, since in similar cases bail is granted by the court after a lapse of time....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration the similar cases registered in J5 Shastri Nagar Police Station Cr.No.256/2017 for the offence under Sections 302 IPC @ 302, 457 and 380 IPC and R2 Kodambakkam Police Station Cr.No.324/2018 for the offence under Sections 341, 294(b), 336, 323, 427, 397 and 506(ii) IPC and bail was granted by the Court of Principal Sessions, Chennai in CrI.M.P.No.4043/2017 and

Crl.M.P.No.8608/2018 respectively and therefore, there is a real possibility of the detenu coming out on bail and indulge in such activities prejudicial to the maintenance of public order. The offence in similar cases relied on by the authority and the offence in the adverse case 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 cases 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 BCDGIISSV No.1158/2018 dated 24.12.2018, passed by the second respondent is set aside. The detenu, namely, Ilaiyaraja, S/o.Sengamalai, aged about 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

mmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Chennai-600 004.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.

+1cc to M/s.G.Bala & Daisy, Advocates, vide SR.No.47261

H.C.P.No.379 of 2019

Kak(25/07/2019)