

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.384 of 2019

Raji

.. Petitioner

Vs

1.State of Tamil Nadu rep. By
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records pertaining to the order of detention passed in No.1016/BCDFGISSSV/2018 dated 02.11.2018 passed by the second respondent and set aside the same and direct the respondents to produce the petitioner's nephew by name Kishore @ Dinesh, son of Moorthy aged about 24 years before this Court now confined at Central Prison, Puzhal, Chennai and set him at liberty.

For Petitioner .. Mr.K.Thenrajan

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 uncle of the detenu and challenge is made to the order of detention dated 02.11.2018 made in No.1016/BCDFGISSSV/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 case relied on by the detaining authority is not similar in nature and the offences in the third 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..... The sponsoring authority has stated that the relatives of Thiru Kishore @ Dinesh are taking action to take him on bail in H8 Thiruvottiyur Police Station Crime Nos.1194/2018 and 1197/2018 by filing bail application before the appropriate court. In a similar case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail in H8 Thiruvottiyur Police Station Crime Nos.1194/2018 and 1197/2018 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 a similar case registered in M4 Red Hills Police Station Cr.No.369/2018 under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC and bail was granted Crl.M.P.No.3177/2018 by the Principal District and Sessions Court, Tiruvallur 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 similar case relied on by the authority was registered for the offences under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offences involved in the third adverse case and ground case are under Sections 341, 387 and 506(ii) IPC and 341, 294(b), 336, 427, 392, 397 and 506(ii) IPC respectively. 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 No.1016/BCDFGISSSV/2018 dated 02.11.2018, passed by the second respondent is set aside. The detenu, namely, Kishore @ Dinesh, aged 24 years, son of Moorthy, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mmi

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai - 66.
4. The Joint Secretary to Government
Public (Law & Order),
Fort St. George, Chennai - 9.

- 5.The Public Prosecutor,
High Court, Madras.

RJ(CO)
GMY(10/07/2019)

H.C.P.No.384 of 2019

