

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.407 of 2019

V.Neetha

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. by The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Goondas Section, Vepery, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for records in connection with the order of detention passed by the second respondent D.O.No.49/BCDFGISSSV/2019 dated 06.02.2019 against Venkatesh Naik, Son of Ragavendra, confined at Central Prison, Puzhal and set aside the same, consequently direct the respondents to produce the body of the detenu Venkatesh Naik son of Ragavendra before this Court and set him at liberty.

For Petitioner.. Mr.R.Vivekananthan

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 06.02.2019 made in

No.49/BCDFGISSSV/2019, 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 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 Venkatesh Naik are taking action to take him on bail in Central Crime Branch Cr.Nos.17/2019 and 18/2019 by filing another bail application before the appropriate court. In a similar case registered in Central Crime Branch Cr.No.173/2017 u/s 465, 467, 468, 471, 474, 420 & 12(1)(d) of Passport Act 1967 bail was granted by the Court of Principal Sessions, Chennai in CrI.M.P.No.10891/2017. Hence I infer that there is real possibility of his coming out on bail in Central Crime Branch Cr.Nos.17/2019 and 18/2019 by filing another bail application before the appropriate court, since in similar cases bail is granted by the courts 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 Central Crime Branch Cr.No.173/2017 for the offence under Sections 465, 467, 468, 471, 474, 420 & 12(1)(d) of Passport Act 1967 and bail was granted by the Court of Principal Sessions, Chennai in CrI.M.P.No.10891/2017 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 465, 467, 468, 471, 474, 420 & 12(1)(d) of Passport Act 1967 whereas the offences involved in the adverse case and ground case are under Sections 12(1)(b), 12(2) of Passport Act, 1987 r/w 420, 468 and 471 IPC and 12(1)(b), 12(2) of Passport Act, 1967 r/w 420, 468 and 471 IPC. 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.49/BCDFGISSSV/2019 dated 06.02.2019, passed by the second respondent is set aside. The detenu, namely, Venkatesh Naik, S/o.Raghavendra, aged about 49 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Goondas Section, Vepery, Chennai.
 - 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.
- +1cc to Mr.R.Vivekananthan , Advocate SR.No. 47363
H.C.P.No.407 of 2019
A.SK(16/07/2019)