

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

Coram

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

H.C.P.No.471 of 2019

Udaya Yadav Bogati

.. Petitioner

Vs

1.State of Tamil Nadu
Rep.by The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records relating to the detention order in Memo No.990/BCDFGISSSV/2018 dated 27.10.2018 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Thiru.Narath Bogati S/o Yadav Bogati, aged about 22 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Thiru.Narath Bogati S/o Yadav Bogati, aged about 22 years the detenu herein set him liberty.

For Petitioner .. Mr.R.Muthukumar

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 father of the detenu and challenge is made to the order of detention dated 27.10.2018 made in Memo No.990/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 cases relied on by the detaining authority are not similar in nature and the offence in the adverse cases and ground case are totally different. Therefore, the real possibility 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 stated that Thiru.Narath Bogati's relatives are taking action to take him out on bail in R-11 Royala Nagar Police Station Crime Nos.264/2018, 267/2018 and 275/2018 by filing bail application before the appropriate Court. Further, in a case registered in J-13 Tharamani Police Station Cr.No.1082/2018 under sections 341, 336, 427, 397, 506(2) IPC bail was granted by the Court of Principal Sessions, Chennai in CrI.M.P.No.13131/2018. Further, in a case registered in S-8 Adambakkam Police station Cr.No.539/2018 u/s. 457, 511 IPC bail was granted by the court of Judicial Magistrate, Alandur, Chennai in CrI.M.P.No.5335/2018. Hence, I infer that there is real possibility of his coming out on bail in R-11 Royala Nagar Police Station Crime Nos.264/2018, 267/2018 and 275/2018 by filing bail application before the appropriate Court, since in similarly placed cases bail is granted by 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 the similar cases registered in J-13 Tharamani Police Station Cr.No.1082/2018 under Sections 341, 336, 427, 397, 506(2) IPC, wherein, bail was granted by the Court of Principal Sessions, Chennai in CrI.M.P.No.13131/2018 and in S-8 Adambakkam Police station Cr.No.539/2018 u/s. 457, 511 IPC, wherein bail was granted by the court of Judicial Magistrate, Alandur, Chennai in CrI.M.P.No.5335/2018 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 cases relied on by the authority were registered for the offence under Sections 341, 336, 427, 397, 506(2) IPC and 457, 511 IPC whereas the offence involved in the adverse cases and ground case are under Sections 457 and 511 IPC, 341, 395, 506(ii) IPC and 341, 294(b), 397, 336, 427 and 506(ii) 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 Memo No.990/BCDFGISSSV/2018 dated 27.10.2018, passed by the second respondent is set aside. The detenu, namely, Narath Bogati S/o Yadav Bogati, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

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

2.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.471 of 2019

VD(CO)
SP(12/07/2019)