

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.498 of 2019

Asmabegam ... Petitioner

-vs-

1. State Rep. By the Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,  
Greater Chennai,  
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in No.663/BCDFGISSSV/2018 dated 06.08.2018 on the file of the 2<sup>nd</sup> respondent and quash detention as illegal and direct the respondents to produce the detenu Mohammed Erwadi Ibrahim S/o. Mohammed Sherif, aged 48 years now confined in Central Prison - I, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Rajanikanth

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 Mohammed Erwadi Ibrahim S/o. Mohammed Sherif aged 22 years, who is the detenu. The detenu has been detained by the second respondent by his order in 663/BCDFGISSSV/2018 dated 06.08.2018, holding to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.The learned counsel appearing for the petitioner submitted that the Detention Order was passed by the second respondent on 06.08.2018 and on the very same day, the detenu was granted bail, however, surety is not yet offered. Thus to preempt the detenu from getting enlarged on bail, the detention order has been passed. Learned counsel further submitted that the detention order cannot be sustained more so when the detenu therein is not involved in any other similar matter. There is no material to show that he would indulge in further activities, and, therefore the order passed by the Detaining Authority would require interference.

3.The learned Additional Public Prosecutor submitted that there is a compelling necessity to detain the detenu with a view to prevent him from indulging in any such activities in future. Therefore, the order passed by the Detaining Authority would require no interference.

4.More than ten months have elapsed. We are of the view that there cannot be subjective satisfaction which is to preempt the detenu from executing the sureties. Admittedly, the detenu was not involved in any other cases. There is no material to come to subjective satisfaction on the compelling necessity to detain the detenu in order to prevent him from indulging in any such activities in future. It is nothing but mere apprehension, not borne out by records. Thus, for the reasons stated hereinabove, the impugned detention order is liable to be quashed.

5.In such view of the matter, the Habeas Corpus Petition is allowed and the order of detention in No.663/BCDFGIISSSV/2018 dated 06.08.2018, passed by the second respondent is set aside. The detenu, Mohammed Erwadi Ibrahim S/o. Mohammed Sherif, aged 48 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

सत्यमेव जयते  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

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

2. The Commissioner of Police,  
Greater Chennai,  
Chennai.
3. The Superintendent of Prison,  
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,  
Public (Law & Order),  
Fort. St George,  
Chennai - 9.
5. The Public Prosecutor,  
High Court, Madras.

H.C.P. No. 498 of 2019

VD(CO)  
SSM(29/07/2019).



WEB COPY