

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

Coram

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

H.C.P. No. 495 of 2019

Parasuraman

... Petitioner

-vs-

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

2.The District Magistrate and District Collectorate,
Vellore District,
Vellore - 9.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in connection with the order of detention passed by the 2nd respondent 05.12.2018 in C3/D.O.No.102/2018 the petitioner Parasuraman, male, aged 36 years, S/o. Subramani, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.C.Iyyappa Raj
Addl.Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner, Parasuraman, S/o. Subramani, aged about 36 years is the detenu. The detenu has been detained by the second respondent by his order in C3/D.O.No.102/2018, dated 05.12.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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 offence in the adverse 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru Parasuraman has filed a bail applications before the Court of Principal Sessions Judge, Vellore in ground case in Arakkonam Taluk Police station in Crime No.424/2018, u/s 376,302 IPC in Crl.M.P.No.5762 of 2018 and the same was pending in the Court. As far as the ground case concerned, in a similar case registered at Kanchi Taluk Police station Crime No.15/2016, under Section 147,148,506(ii),302 IPC, 120B, 147,148,506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused Tvl. K. Sandhar, S/o.Kuppan and Moses, S/o.Joseph by the Court of the Hon'ble Sessions Court II, Kanchipuram in Crl.M.P.No.600/20166 on 06.04.2016. As bails are being granted by Courts in such cases, there is real possibility of his coming out of bail, in the above pending bail application before the Court. If he enlarged himself on bail, he would indulge in further activities, which will be prejudicial to the maintenance of public peace....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Kanchi Taluk Police station Crime No.15/2016, under Sections 147,148,506(ii),302 IPC, 120B, 147,148,506(ii), 302 IPC and 149, 109, 114 IPC, bail was granted by the Sessions Court-II, Kanchipuram in Crl.M.P.No.600/20166 on 06.05.2016 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 offence under Sections

147,148,506(ii),302 IPC, 120B, 147,148,506(ii), 302 IPC and 149, 109, 114 IPC whereas the offence involved in the adverse case are under Sections 294(b), 324 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 C3/D.O.No.102/2018, dated 05.12.2018, passed by the second respondent is set aside. The detenu, namely, Parasuraman, S/o. Subramani, aged about 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To:

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collectorate,
Vellore District,
Vellore - 9.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public(Law & Order)
Fort St.George, Chennai-9.

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nr 23/07/2019