

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No.496 of 2019

Venkatesan

.. Petitioner/Detenu

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.District Collector & District
Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in connection with the order of detention passed by the second respondent dated 04.01.2019 in D.O.No.01/2019-C2 against the petitioner Venkatesan, male, aged 36 years, S/o.Parasuraman, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before the Hon'ble 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 himself is the detenu and challenge is made to the order of detention dated 04.01.2019 made in D.O.No.01/2019-C2, passed by the second respondent under which the detenu has been branded as a 'Sexual Offender' and detained under Section 2(ggg) of 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.

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

"5.I am aware that the accused Thiru.Venkatesan, in the ground case in All Women Police Station, Arni Crime No.14/2018 was remanded to judicial custody in Central prison, Vellore. Further the Sponsoring Authority has filed a Special Report stating that the relatives of the accused Thiru.Venkatesan was trying to release the accused on bail in the above ground case by filing bail applications before appropriate court. I am also aware that in a similar case registered in All Women Police Station, Tiruvannamalai in Cr.No.05/2013 u/s 376 and 506(i) IPC against Thiru.Soundarrajan, S/o. Natarajan, bail applications were filed on behalf of the accused before the Hon'ble District Sessions Court in Cr.M.P.Nos.667/2013 and 1227/2013 and the same were dismissed on 26.02.2013 and 22.04.2013 respectively. Another bail application was filed on behalf of the accused before the Hon'ble District Sessions Court, Thiruvannamalai in Cr.M.P.No.1382/2013 and the bail was granted on 10.05.2013. Hence I infer that it is real possibility of his (Thiru.Venkatesan) coming out on bail by applying bail application in the appropriate court, since bails are granted by the courts in the ground case....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Cr.No.05/2013 on the file of the All Women Police Station, Tiruvannamalai for the offence under Sections 376 and 506(i) IPC and bail was granted to the accused in Cr.M.P.No.1382/2013 on 10.05.2013 by the District Sessions Court, Thiruvannamalai, though earlier bail petitions were dismissed 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 376 and 506(i) IPC whereas the offence involved in the ground case are under Sections 376(A)(B), 506(i) IPC and Sections 4 and 6 of POCSO Act, 2012. 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 D.O.No.01/2019-C2 dated 04.01.2019, passed by the second respondent is set aside. The detenu, namely, Venkatesan, aged 36 years, S/o.Parasuraman, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.District Collector & District
Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

3.The Superintendent,
Central Prison, Vellore.

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.496 of 2019

PVS (CO)
RRS (05/08/2019)