

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.510 of 2019

Banu .. Petitioner/Wife of Detenu

Vs

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.

.. 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 18.12.2018 in BCDFGISSSV No.1143/2018 against petitioner's husband, the detenu Venkatesh @ Karukka Pallu Venkatesh, now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Thiru.Venkatesh @ Karukka Pallu Venkatesh, S/o.Elumalai, aged about 30 years before this Court and set him at liberty.

For Petitioner .. Mr.A.Nirmal Kumar
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 18.12.2018 made in BCDFGISSSV No.1143/2018, 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 case relied on by the detaining authority is not similar in nature and the offences in the first and third adverse cases 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.I am aware that Thiru Venkatesh @ Karukka Pallu Venkatesh is in remand in B1 North Beach Police Station Cr.Nos.1381/2017, 615/2018, 621/2018 and 623/2018 and lodged at Central Prison, Puzhal, Chennai. He has moved a bail application for B1 North Beach Police Station Cr.No.623/2018 before the Principal Sessions Court, Chennai in Crl.MP.No.21079/2018 and the same is pending. He has not moved any bail application for B1 North Beach Police Station Cr.Nos.1381/2017, 615/2018, 621/2018 cases. The sponsoring authority has stated that the relatives of Thiru Venkatesh @ Karukku Pallu Venkatesh are taking action to take him on bail in B1 North Beach Police Station Cr.Nos.1381/2017, 615/2018, 621/2018 by filing bail application before the appropriate court. In a similar case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018. Hence, I infer that it is very likely of his coming out on bail in B1 North Beach Police Station Cr.No.623/2018 and also there is real possibility of his coming out on bail in B1 North Beach Police Station Cr.Nos.1381/2017, 615/2018, 621/2018 by filing bail application before the appropriate court, since in similar case bail is granted by the court 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 M4 Red Hills Police Station Cr.No.369/2018 for the offence under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC wherein bail was granted by the Principal District

and Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018 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 case relied on by the authority was registered for the offences under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offence involved in the first and third adverse cases are under Sections 379 IPC and 341, 294(b), 384 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 BCDFGISSSV No.1143/2018 dated 18.12.2018, passed by the second respondent is set aside. The detenu, namely, Venkatesh @ Karukka Pallu Venkatesh, S/o.Elumalai, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-

Assistant Registrar (CS V)

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 Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9

H.C.P.No.510 of 2019

RSK(CO)
SP(22/07/2019)