



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

Coram

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

H.C.P.No.576 of 2019

Sivagami

..

Petitioner

Vs

1. State of Tamil Nadu

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

2. The District Magistrate and

District Collector,
Thiruvallur District,
Thiruvallur

..

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 dated 03.02.2019 passed by the second respondent in BCDFGISSSV No.05 of 2019 and quash the same and direct the respondents herein to produce the petitioner's brother Kamal @ Kamalarajan, S/o late Mani, aged 32 years, N.V.N. Nagar, Gnayairu Village, Ponneri Taluk, Thiruvallur District, who is confined at Central Prisons-II, Puzhal, Chennai.

For Petitioner .. Mr.G. Gayathri
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 sister of the detenu viz., Kamal @ Kamalarajan, Male, aged 32 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV.No.05/2019 dated 03.02.2019, holding him to be a "Sexual Offender", as contemplated under Section 2(3) (ggg) 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. Though the order of detention is challenged on various grounds, the main submission of the learned counsel for the petitioner is that the detaining authority, in the grounds of detention, while expressing subjective satisfaction with regard to the real possibility of the detenu coming out on bail in the case, in which he was on remand, has observed that the detenu has not filed bail petition in respect of the ground case in Cr.No.8 of 2018 for the offence punishable under Sections 363, 342, 354-D IPC and Section 4 of POCSO Act on the file of All Women Police Station, Ponneri and therefore, the subjective satisfaction arrived by the detaining authority is not proper and hence the subjective satisfaction expressed is vitiated.

4. On a careful scrutiny of the grounds of detention, it is seen that when no bail petition has been filed by the detenu, it is not known as to how the detaining authority has arrived at the subjective satisfaction, in the absence of any supporting material thereof, which really shows non-application of mind on the part of detaining authority and hence, the impugned detention order cannot be sustained and the same is vitiated.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV.No.05/2019 dated 03.02.2019, passed by the second respondent is set aside. The detenu, namely, Kamal @ Kamalarajan, Male, S/o. Mani, aged 32 years is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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

HCP No.576 of 2019

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nr 01/08/2019