

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.594 of 2019

Maheswari

.. Petitioner

Vs

- 1.The State of Tamil Nadu
Rep.by The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Salem City,
Salem District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records made in impugned Order No.CMP No.5/GOONDA/Salem City/2019 dated 21.02.2019 passed by the Commissioner of Police, Salem City, Salem District, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Mariyappan @ Meenkara Mariyappan, S/o Kaliappan, aged 57 years, now confined at Central Prison, Salem and set him at liberty.

For Petitioner .. Mr.R. Srinivasa Rao
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 viz., Mariappan @ Meenkara Mariappan and challenge is made to the order of detention dated 21.02.2019 made in C.M.P.No.5/Goonda/Salem City/2019, 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 adverse case 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 6 of the grounds of detention are extracted below:

"4. I am aware that Thiru Mariappan @ Meenkara Mariappan is in remand in the cases of Sooramangalam PS Cr.No.131/2018, u/s 454 & 380 IPC, Sooramangalam PS Cr.No.607/2018, u/s 457 & 380 IPC, Sooramangalam PS Cr.No.809/2018, u/s 454 & 380 IPC, Sooramangalam PS Cr.No.61/2019, u/s 380 IPC, Sooramangalam PS Cr.No.65/2019 u/s 457 & 380 IPC, Sooramangalam PS Cr.No.68/2019, u/s 380 IPC and Sooramangalam PS Cr.No.74/2019, u/s 341, 392 r/w 397, 427, 506(ii) IPC and the bail petitions filed on behalf of him in the cases of Sooramangalam PS in Cr.Nos.131/2018, 607/2018, 809/2018, 61/2019, 65/2019 and 68/2019 are pending for hearing before the Court of Judicial Magistrate No.2, Salem. However, it is learnt that the relative of Thiru.Mariappan @ Meenkara Mariappan is taking efforts to move bail application to take him out on bail in the case of Sooramangalam PS Cr.No.74/2019. I am also aware that bail has been granted by the Principal Sessions Judge, Salem in CMP No.3972/2014 dated 03.11.2014 for a similar case of Hasthampatty Police Station Cr.No.555/2014 u/s 392, 397 and 506(ii) IPC registered against one Thiru.Veerappan @ Vinothkumar, who was remanded on 27.09.2014. Hence, I infer that there is a real possibility of his (Thiru.Mariappan @

Meenkara Mariappan) coming out on bail by filing bail application in the above cases, since bails are granted for similar cases by the concerted Court or the higher court after efflux of time. If Thiru.Mariappan @ Meenkara Mariappan comes out on bail in the above cases in which he is in remand he will indulge in further activities, which will be prejudicial to the maintenance of public order.....”

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Hasthampatty Police Station in Crime No.555 of 2014 for the offences under Sections 392, 397 and 506(ii) IPC and bail was granted to the detenu in Cr.M.P.No.3972/2014 by the learned Principal Sessions Judge, Salem. Salem 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 392, 397 and 506(ii) IPC , whereas the offences involved in the ground case are under Sections 341, 392 r/w 397, 427 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 No.C.M.P.No.5/Goonda/Salem City/2019 dated 21.02.2019 passed by the second respondent is set aside. The detenu, namely, Mariappan @ Meenkara Mariappan, age 57 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

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

2. The Commissioner of Police,
Salem City,
Salem District

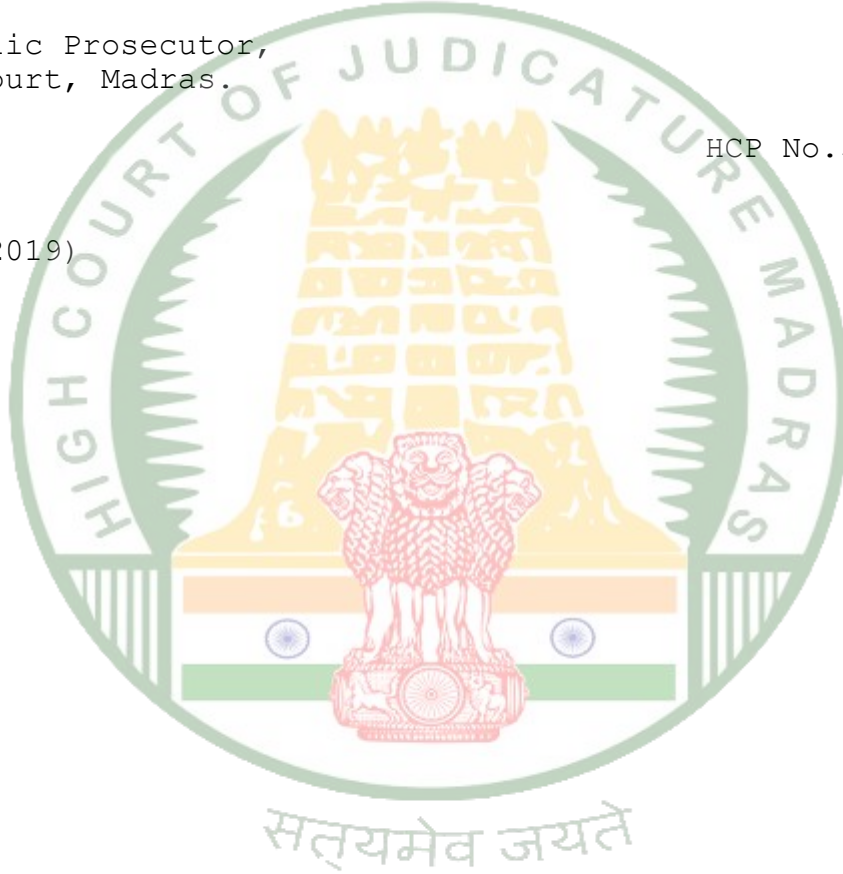
3.The Superintendent,
Central Prison, Salem

4.The Joint Secretary to Government
Public (law and order)
Fort. St. George
Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

HCP No.594 of 2019

KK(CO)
SP(23/07/2019)



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