

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

Coram

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

H.C.P.No.685 of 2019

Susila ... Petitioner/Mother of the Detenu

Vs

1.The State of Tamil Nadu  
Rep. by The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai - 9.

2.The District Collector and District Magistrate,  
Vellore District.

... 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 in his proceedings Memo No.C3/D.O.No.78/2018, dated 11.10.2018 against the petitioner's son Mavu @ Mohanbabu, aged 20 years, son of Kaliyaperumal who is confined at Central Prison, Vellore and set aside the same and direct the respondent to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.K.Nepolean

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 mother of the detenu and challenge is made to the order of detention dated 11.10.2018 made in C3/D.O.No.78/2018, 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 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru.Mavu @ Mohanbabu has filed a bail application before the court of Principal Sessions Judge, Vellore in ground case in Arakkonam Town Police Station Crime No.502/2018, u/s. 341, 294 (b), 506(ii), 392, 397 I.P.C in Crl.M.P.No.4195/2018 and the same was pending in the court. As far as the ground case concerned, in a similar case registered at Vellore North Crime Police Station crime No.200/2017, under Section 294(b), 394,397, 506(i), I.P.C. bail was granted to the accused Thiru.Nandhu @ Nandhakumar by the Court of Principal District Judge, Vellore in Crl.M.P.No.2714/2017 on 07.07.2017. As bails are being granted by courts in such cases, there is most likely that he (Tiru.Mavu @ Mohanbabu) may coming out of bail, he would indulge in further activities which will be prejudicial to the maintenance of public order and 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 Vellore North Crime Police Station Crime No.200/2017, under Section 294(b), 394, 397, 506(i) I.P.C. and bail was granted to the detenu in Crl.M.P.No.2714/2017 on 07.07.2017 by the Principal District Judge, Vellore 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 294(b), 394, 397, 506(i) I.P.C. whereas the offences involved in the ground case are under Sections 341, 294(b), 506(ii), 392, 397 I.P.C. 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.78/2018 dated 11.10.2018, passed by the second respondent is set aside. The detenu, namely, Mavu @ Mohanbabu, S/o.Kaliyaperumal, aged about 20 years, 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

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To

- 1.The Secretary to Government  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai - 9.
- 2.The District Collector and District Magistrate,  
Vellore District.
- 3.The Superintendent,  
Central Prison, Vellore.
- 4.The Joint Secretary to Government,  
Public(Law & Order),  
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,  
High Court, Madras-104.

+1cc to Mr.D.K.Nepoleon, Advocate Sr.52095

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pvs[col]  
srg 26/07/2019