

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.704 of 2019

Rajkumar .. Petitioner/Cousin Brother

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District,
Cuddalore. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in C3/D.O/59/2018 dated 26.09.2018 on the file of the second respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner's cousin brother Jointraj @ Rajkumar, son of Ramasamy, aged about 22 years, who now detained in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.M.Selvam

For Respondents: Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

ORDER

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The petitioner is the cousin brother of Jointraj @ Rajkumar, aged about 22 years, who is the detenu, has been detained by the second respondent by his order in C3/D.O./59/2018 dated 26.09.2018, holding him to be a "GOONDA", as contemplated under Section 2(f) 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. The Detaining Authority namely, the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already come to adverse notice in one case and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. Though, several grounds were raised in the petition, the learned counsel appearing for the petitioner would mainly focus on the ground that though there was no bail application pending in Crime No.487 of 2018 on the file of Vridhachalam Police Station, the detaining authority has stated that the relatives of the detenu were taking steps to file bail application, in which case there was real possibility of the detenu coming out on bail. The learned counsel pointed out that to arrive at such a conclusion, there was no material placed before the detaining authority at all.

5. The learned Additional Public prosecutor would submit that the relatives of the detenu were taking steps to file bail application in connection with the case in Crime No.487/2018.

6. We have considered the above submissions. Admittedly, as on the date of passing of the detention order, there was no application filed by the detenu seeking bail in Crime No.487/2018 on the file of Vridhachalam Police Station. Though it is alleged that his relatives were taking steps to file an application for bail, there were no materials available before the detaining authority to show that the relatives were taking steps to file application seeking bail. Full details as to who are those relatives, who were taking steps to file bail application also have not been mentioned. Thus, in our considered view, without making proper application of mind relating to these facts, the detaining authority has passed the detention order. Therefore, we are inclined to set aside the same.

7. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent

in Memo No. C3/D.O.59/2018 dated 26.09.2018 is set aside and the detenu namely, Jointraj @ Rajkumar, S/o Ramu aged about 22 years, who is confined at Central Prison, Cuddalore is set at liberty forthwith unless his detention is required in connection with any other case proceedings.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District,
Cuddalore.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Selvam, Advocate SR.No.53031

H.C.P.No.704 of 2019

MR(CO)
GMY(22/07/2019)

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