

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

Coram

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

H.C.P. No.722 of 2019

Latha

... Petitioner

-vs-

State Rep By:

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St. George, Chennai - 600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records in C.M.P.No.22/Goonda/2018/M1, dated 21.12.2018 on the file of the District Magistrate and District Collector, Namakkal District, Namakkal, the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenu Vicky @ Vignesh S/o. Poomalai Subramaniam, aged about 23 years now confined at Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Rajanikanth

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, Vicky @ Vignesh S/o. Poomalai Subramaniam, aged about 23 years. The detenu has been detained by the second respondent by his order

in C.M.P.No.22/Goonda/2018/M1, dated 21.12.2018, 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 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 offence in the second adverse case are totally different. Therefore, the real possibility 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 Vicky @ Vignesh was remanded upto 11.12.2018 as per the order of the Judicial Magistrate, Tiruchengode and lodged in Central Prison, Salem for Tiruchengode Police Station Cr.No.477/2018 u/s 399, 402 IPC. His remand period has been extended upto 24.12.2018. He has not filed bail application so far. Even though he is not filing bail applications, his relatives takes steps to file bail application before the appropriate court. In a similar case registered at Kolathur Police Station Cr.No.135/2017 u/s 399 and 402 IPC bail was granted to the accused in C.M.P.No.2199/2017 on 16.06.2017 by the Principal Sessions Court, Salem. Hence there is a real possibility of Thiru.Vicky @ Vignesh coming out on bail in this case also. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of 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 Kolathur Police Station Cr.No.135/2017 u/s 399 and 402 IPC for the offences under Sections 399 and 402 IPC and bail was granted in C.M.P.No.2199/2017 by the Principal Sessions Court, 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 399 and 402 IPC whereas the offence involved in the second adverse case are under Sections 147 and 364(A) 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 C.M.P.No.22/Goonda/2018/M1, dated 21.12.2018, passed by the second respondent is set aside. The detenu, namely, Vicky @ Vignesh S/o. Poomalai Subramaniam, aged about 23 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

mmi/ssm

To:

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and
District Magistrate,
Namakkal District,
Namakkal
3. The Superintendent
Central Prison, Salem.
4. The Public Prosecutor,
High Court, Madras.

H.C.P. No.722 of 2019

VSN-II (CO)
SSM(18/07/2019).

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