

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.06.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

H.C.P.No.734 of 2019

Selvi

.. Petitioner

Vs

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

2.The Commissioner of Police/
Detaining Authority,
City Police Office, Huzur Road,
Coimbatore City, Coimbatore - 18.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 29.03.2019 on the file of the second respondent herein made in proceedings Memo C.No.11/G/IS/2019 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely M.Gopalakrishnan, S/o.Murthy, aged 31 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner... Mr.W.Camyles Gandhi

For Respondents.. Mr.R.Prathap Kumar,
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 29.03.2019 made in C.No.11/G/IS/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.

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 ground 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 8 of the grounds of detention are extracted below:

"8.I am aware that M.Gopalakrishnan was remanded to judicial custody in the ground case. In this case, no bail application has been filed on his behalf so far. However, it is learnt from the statement of Thiru.Senthilkumar, brother of M.Gopalakrishnan, it is evident that steps are being taken to get bail for the accused in this case. Further in Coimbatore City, C-2 Race Course Police Station Crime No.991/2016 u/s 294 (b), 323, 506(ii) IPC and 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (which is registered under similar sections of law), bail was granted to the accused Ashokkumar by the Court of Hon'ble Principal District and Sessions Judge, Coimbatore in C.M.P.No.2767/2016 on 07.11.2016. Copies of the above orders are enclosed in the booklet containing the related documents/records. Hence, I infer that there is a real possibility of the accused M.Gopalakrishnan coming out on bail by filing bail application in the ground case before the appropriate court, since in similar cases the concerned court or higher court grants bail after lapse of certain time....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Coimbatore City, C-2 Race Course Police Station Crime No.991/2016 u/s 294(b), 323, 506(ii) IPC and 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, bail was granted to the accused Ashokkumar by the Principal District and Sessions Judge, Coimbatore in C.M.P.No.2767/2016 on 07.11.2016 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), 323, 506(ii) IPC and 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, whereas the offences involved in the ground case are under Sections 75(1)(C) TNCP Act, 1888 and 323, 506(ii) IPC and 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. 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.No.11/G/IS/2019 dated 29.03.2018, passed by the second respondent is set aside. The detenu, namely, M.Gopalakrishnan, S/o.Murthy, aged 31 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police/
Detaining Authority,
City Police Office, Huzur Road,
Coimbatore City, Coimbatore - 18.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government,
Public (Law and order),
Fort St.George,
Chennai -9.

H.C.P.No.734 of 2019

MP (CO)
RRS (07/08/2019)