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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.750 of 2019

Chitra

.. 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. District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.

.. Respondents

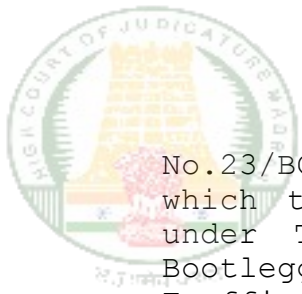
Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the entire records leading to the detention of the petitioner's husband Siva @ Pattaravakkam Siva, son of Santhiyappan, male, aged about 39 years is presently lodged in Central Prison, Puzhal at Chennai and has been detained under Act 14/82 as a Goonda vide detention order dated 31.03.2019 on the file of the second respondent herein made in Memo No.23/BCDFGISSSV/2019 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty.

For Petitioner .. Mr.M.Rajavelu
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 wife of the detenu and challenge is made to the order of detention dated 30.11.2018 made in Memo



No.23/BCDFGISSSV/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 (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 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru.Siva @ Pattaravakkam Siva, S/o.Santhiyappan was surrendered in Chengalpattu Taluk PS Cr.No.108/2019 on 12.03.2019 before the Judicial Magistrate-II, Chengalpattu is a triable court hence ordered to be remanded upto 26.03.2019 and lodged at Central Prison, Puzhal, Chennai - 600 066 as a remanded prisoner. Meanwhile he was taken on police custody in between 15.03.2019 to 18.03.2019 interrogated in the above case then he was produced before the triable court on 18.03.2019 and relodged at Central Prison, Puzhal, Chennai - 600 066 as a remanded up to 26.03.2019. His remand period was further extended upto 09.04.2019. He has filed a bail petition in above case before the Principal District and Sessions Court, Chengalpattu in CrI.M.P.No.1349/2019 and the same was dismissed on 19.03.2019. Then he had filed another bail petition before High Court, Madras on 21.03.2019 in CrI.O.P.No.8060/2019 and the same was pending before the Court. If he is released on bail he will again indulge in similar activities prejudicial to the maintenance of public peace and public order in future. However, in the same nature of offences in some similar cases, accused was released on bail through appropriate court in various instances i.e. in Maraimalai Nagar Police Station Cr.No.480/2015 u/s 294(b), 395, 397, 506(ii) IPC accused Thiru.Sugumar S/o.Marimuthu @ Sekar was released on bail through



High Court, Madras in Crl.O.P.No.14019/2015 on 11.06.2015. In the same way there is a real possibility of him for being released on bail in the above case also....."

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5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Maraimalai Nagar Police Station Cr.No.480/2015 u/s 294(b), 395, 397, 506(ii) IPC and bail was granted to the accused Thiru.Sugumar S/o.Marimuthu @ Sekar in Crl.O.P.No.14019/2015 on 11.06.2015 by this Court 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), 395, 397, 506 (ii) IPC whereas the offences involved in the ground case are under Sections 147, 148, 341, 294(b), 397, 307, 324 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 Memo No.23/BCDFGISSSV/2019 dated 31.03.2019, passed by the second respondent is set aside. The detenu, namely, Siva @ Pattaravakkam Siva, son of Santhiyappan, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.



3.The Superintendent,
Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government,
Public (Law & Order), Fort St. George, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.750 of 2019

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nr 30/07/2019