

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

Coram

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

H.C.P. No. 773 of 2019

Arumugam

... Petitioner

-vs-

1.State of Tamil Nadu
Rep. By The Secretary,
Home, Prohibition and Excise Department,
Fort St.George,Chennai - 600 009.

2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai - 600 007.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records relating to the detention order in Memo No.92/BCDFGISSSV/2019, dated 16.02.2019 passed by the 2nd respondent to produce the petitioner's son Anbazhagan @ Anbu, S/o. Arumugam aged about 34 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Anbazhagan @ Anbu S/o. Arumugam aged about 34 years the detenu herein at liberty.

For Petitioner : Mr.G.B.Motcham

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 father of the detenu, Anbazhagan @ Anbu,
S/o. Arumugam aged about 34 years. The
detenu has been detained by the second respondent by his order

in Memo No. 92/BCDFGISSSV/2019, dated 16.02.2019, 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 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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru Anbazhagan @ Anbu is in remand in M1 Madhavaram Police Station Cr.Nos.40/2019 and 42/2019 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for M1 Madhavaram Police Station Cr.Nos.40/2019 and 42/2019 cases. The sponsoring authority has stated that the relatives of Thiru Anbazhagan @ Anbu are taking action to take him on bail in M1 Madhavaram Police Station Cr.Nos.40/2019 and 42/2019 cases by filing bail application before the appropriate court. In a similar case registered u/s 341,302 IPC in C3 Manimangalam Police Station Cr.No.75/2016 bail was granted by the Principal Sessions Court, Kancheepuram District, Chengalpattu in CrI.M.P.No.728/2016. Hence, I infer that there is real possibility of his coming out on bail in M1 Madhavaram Police Station Cr.Nos.40/2019 and 42/2019 cases by filing bail application before the appropriate court, since in similar case bail is granted by the court after a lapse of time. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered u/s 341,302 IPC in C3 Manimangalam Police Station Cr.No.75/2016 and bail was granted by the Principal Sessions Court, Kancheepuram District, Chengalpattu in CrI.M.P.No.728/2016, 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 u/s 341 and 302 IPC whereas the offences involved in the ground case are under Sections u/s 341, 294(b), 336, 427, 392 r/w 397 & 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 No. 92/BCDFGISSSV/2019, dated 16.02.2019, passed by the second respondent is set aside. The detenu, Anbazhagan @ Anbu, S/o. Arumugam, aged about 34 years, 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

mmi/ssm

To:

- 1.The Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai - 600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P. No.773 of 2019

ks(co)
nr 29/07/2019