

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.07.2019

CORAM

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

H.C.P.No.815 of 2019

Amudha

.. Petitioner

Vs

1.The State of Tamil Nadu
Rep.by its Secretary to Government,
Prohibition and Excise Department (Home),
Chennai - 600 009.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records relating to the detenu's detention order passed by the second respondent in Memo No.42/BCDFGISSSV/2019 dated 05.02.2019 and set aside the same and produce the detenu Ayyappan, son of Karunanidhi aged about 24 years, now detained in Central Prison, Puzhal before this Court and set him at liberty forthwith.

For Petitioner .. Mr.M.Rajendiran

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

सत्यमेव जयते

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 05.02.2019 made in Memo No.42/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 first adverse 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 Ayyappan is in remand in T14 Mangadu Police Station Crime Nos.1841/2018, 03/2019 and 26/2019 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for T14 Mangadu Police Station Crime Nos.1841/2018, 03/2019 and 26/2019. The sponsoring authority has stated that the relatives of Thiru Ayyappan are taking action to take him on bail in T14 Mangadu Police Station Crime Nos.1841/2018, 03/2019 and 26/2019 by filing bail application before the appropriate court. In a similar case registered u/s 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3177/2018. Hence I infer that there is real possibility of his coming out on bail in T 14 Mangadu Police Station Cr. Nos.1841/2018, 03/2019 and 26/2019 by filing bail application before the appropriate court, since in similar cases bail is granted by the court after a lapse of time....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered under Sections 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC in M-4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3177/2018 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 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offence involved in the first adverse case is under Section 380 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.42/BCDFGISSSV/2019 dated 05.02.2019, passed by the second respondent is set aside. The detenu, namely, Ayyappan, son of Karunanidhi aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Prohibition and Excise Department (Home),
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George,
Chennai-9.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Rajendiran, Advocate, S.R.No.55001

SPD(CO)

RRS (13/08/2019)

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