

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

Coram

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

H.C.P. No.797 of 2019

Rajesh @ Raji

... Petitioner/Detenu

-vs-

1.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police(Goondas Section)
Vepery, Chennai - 600 007.

2.The Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the impugned order Memo No.816/BCDFGISSSV/2018 dated 06.09.2018 on the file of the 1st respondent herein and set aside the same as illegal and direct the respondent to produce the detenu namely, Rajesh @ Raji, son of Late Mohan, Hindu, aged about 22 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodhkumar

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

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner, Rajesh @ Raji, Son of (Late) Mohan, aged 22 years, is the detenu. The detenu has been detained by the first respondent by his order in Memo No.816/BCDFGISSSV/2018 dated

06.09.2018, 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 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 adverse cases and 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 Rajesh @ Raji is in remand in J-5 Shastri Nagar Police Station Crime Nos. 781/2018, 792.2018 and J-4 Kotturpuram Ps.Cr.Nos. 646/2018 and J-9 Thuraipakkam Ps.Cr.No.1050/2018 and J-2 Adyar Ps.Cr.No.334/2018 and he has moved a bail application for J-5 Shastri Nagar Police Station Crime No.781/2018 before the Court of IX Metropolitan magistrate, Saidapet, Chennai, in CrI.M.P.No.1264/2018 and the same is pending. He has not moved any bail petition for J-5 Shastri Nagar Ps.Cr.No.792/2018, J-9 Thuraipakkam Ps.Cr.No.1050/2018 and J-4 Kotturpuram Ps.Cr.Nos. 646/2018, 647/2018 and J-2 Adyar Ps.Cr.No.792/2018, J-9 Thuraipakkam PS Cr.No. 1050/2018 and J-4 Kotturpuram PS.Cr.Nos.646/2018, 647/2018 and J-2 Adyar PS.Cr.No.334/2018 by filing bail application before the appropriate court. It is pertinent to note that in a similar case registered at J-6 Thiruvannamiyur Police Station Crime No.1187/2017 u/s 397 IPC bail was granted by the Court of XVIII Metropolitan Magistrate Court, Saidapet, Chennai - 15 in CrI.M.P.No.1787 of 2017. Similarly, in a case registered at R-2 Kodambakkam Police Station Cr.No.324/2018, u/s 341,294(b),336,323,427,397 and 506 (ii) IPC bail was granted by the Sessions Court of Chennai in CrI.M.P.No.8608/2018. Hence, I infer that it is very likely of his coming out on bail in J-5 Shastri Nagar Police Station Crime No.781/2018 and there is real possibility of his coming out on bail in J-5 Shastri Nagar PS.Cr.No.792/2018, J-9 Thuraipakkam

PS.Cr.No.1050/2018 and J-4 Kotturpuram
PS.Cr.Nos.646/2018, 647/2018 and J-2 Adayar
P.S.Cr.No.334/2018 by filing bail application before
the appropriate court, since in similarly placed cases
bail are granted by courts after a lapse of time. If
he comes out on bail, he will indulge in further
activities, which will be prejudicial to be
maintenance of public order....."

5.From a perusal of the detention order, it is seen that
the detaining authority has taken into consideration the similar
cases registered in J-6 Thiruvannamiyur Police Station Crime
No.1187/2017 u/s 397 IPC bail was granted by the Court of XVIII
Metropolitan Magistrate Court, Saidapet, Chennai - 15 in
Crl.M.P.No.1787 of 2017 and in a case registered at R-2
Kodambakkam Police Station Cr.No.324/2018 u/s 341, 294(b), 336,
323, 427, 397 and 506(ii) IPC bail was granted by the Sessions
Court of Chennai in Crl.M.P.No.8608/2018 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 cases relied on by the authority was
registered for the offences under Sections 397 and 341, 294(b),
336, 323, 427, 397 and 506(ii) IPC whereas the offences involved
in the adverse cases and ground case are under Sections 379 IPC
and 341, 397, 336, 427 and 506(ii) IPC. Therefore, there is
non-application of mind on the part of the detaining authority
in not considering the similar cases 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.816/BCDFGISSSV/2018 dated
06.09.2018, passed by the second respondent is set aside. The
detenu, namely, Rajesh @ Raji, Son of (Late) Mohan, aged 22
years, is directed to be released forthwith unless his detention
is required in connection with any other case.

Sd/-

Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

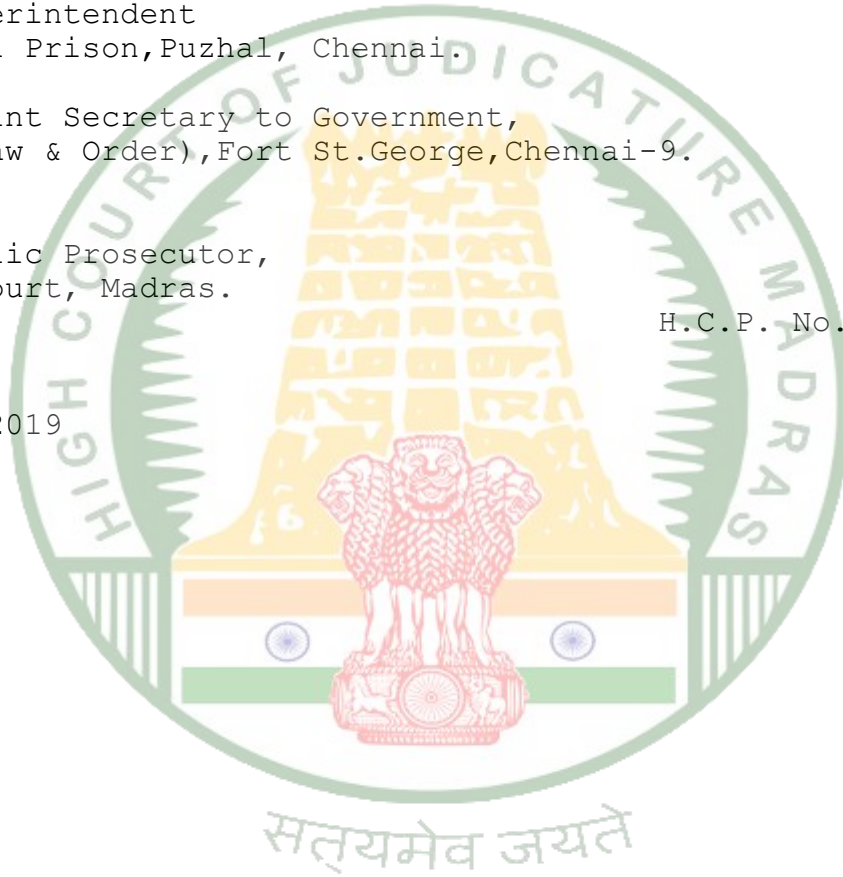
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To:

- 1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police(Goondas Section)
Vepery, Chennai - 600 007.
- 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.

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