

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.811 of 2019

A.Latha .. Petitioner/Mother of Detenue

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Veppery, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in connection with the order of detention passed by the second respondent dated 22.03.2019 in BCDFGISSSV No.140 of 2019 against the petitioner's son A.Dinesh @ Kudumi Dinesh, male, aged about 24 years, son of Arumugam, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner .. Mr.M.Illiyas

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 mother of the detenu and challenge is made to the order of detention dated 22.03.2019 made in

BCDFGISSSV No.140 of 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 second 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 Dinesh @ Kudumi Dinesh is in remand in T-1 Ambathur Police Station Crime Nos.2169/2018, 499/2019 and 411/2019. He has not moved any bail application for T-1 Ambathur Police Station Crime Nos.2169/2018, 409/2019 and 411/2019 so far. The sponsoring authority has stated that the relatives of Thiru Dinesh @ Kudumi Dinesh is taking action to take him out on bail by filing bail application for T-1 Ambathur Police Station Crime Nos.2169/2018, 409/2019 and 411/2019 before the appropriate court. In a 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-1 Ambathur Police Station Crime Nos.2169/2018, 409/2019 and 411/2019 by filing bail application before the appropriate court since in similarly placed cases bails are granted by courts 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 offences involved in the second adverse case are under Sections 323, 324 IPC and 3(1) of TNPPDL 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 BCDFGISSSV No.140 of 2019 dated 22.03.2019, passed by the second respondent is set aside. The detenu, namely, A.Dinesh @ Kudumi Dinesh, male, aged about 24 years, son of Arumugam, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

mmi

To

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

2. The Commissioner of Police,
Greater Chennai,
Veppery, Chennai.

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

4. The Joint Secretary to Government
Public(L & O)
Fort St. George, Chennai - 600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.811 of 2019

KK (CO)
GMY (02/08/2019)



WEB COPY