

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM

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

H.C.P. No.832 of 2019

Bhoti @ Rajagopal

... Petitioner

-vs-

1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 18.12.2018 in Memo No. 1140/BCDFGISSSV/2018 against the petitioner Bhoti @ Rajagopal, male aged 36 years, S/o. Manivannan, who is confined at Central Prison, Puzhal II, 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.K.Shanmugam

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

ORDER

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

The petitioner, Bhoti @ Rajagopal, male aged 36 years, S/o. Manivannan, is the detenu. The detenu has been detained by the second respondent by his order in Memo No.1140/BCDFGISSSV/2018 dated 18.12.2018, 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 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 Bhoti @ Rajagopal is in remand in H4 New Washermenpet Police Station Crime Nos.1034/2018 & 1038/2018 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for Nos.1034/2018 and 1038/2018 cases. The sponsoring authority has stated that the relatives of Thiru Bhoti @ Rajagopal are taking action to take him on bail in H5 New Washermenpet Police Station Cr.Nos.1034/2018 & 1038/2018 by filing bail application before the appropriate court. In a similar case registered u/s 341,294(b),323,336, 427, 307 & 506(ii) IPC in F2 Egmore Police Station Cr.No.145/2018 bail was granted by the Court of Principal Sessions, Chennai in Crl.M.P.No.6184/2018. Hence, I infer that there is real possibility of his coming out on bail in H5 New Washermenpet Police Station Crime Nos.1034/2018 & 1038/2018 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 for the offence under Sections 341,294(b), 323,336, 427, 307 & 506(ii) IPC in F2 Egmore Police Station Cr.No.145/2018 and bail was granted by the Court of Principal Sessions, Chennai in Crl.M.P.No.6184/2018 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 u/s 341,294(b), 323,336, 427, 307 & 506(ii) IPC whereas the offence involved in the second adverse case are under Sections 341, 294(b), 384 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.1140/BCDFGISSSV/2018,dated 18.12.2018, passed by the second respondent is set aside. The detenu, namely, Bhoti @ Rajagopal, S/o. Manivannan, male aged 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 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.K.Shanmugam, Advocate, S.R.No.55316

H.C.P. No.832 of 2019

PPA(CO)

RRS (29/08/2019)