



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.827 of 2019

R.Ammu

... Petitioner

-vs-

1.The Government of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise(XVI)Department,
Fort St.George, Chennai - 600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in detention order Memo.No.155/BCDFGISSSV/2019 dated 28.03.2019 on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the petitioner's son Ganesh @ Racer Ganesh, aged about 22 years, the detenu now confined in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.K.Kannan

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



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ORDER

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

The petitioner is the mother of the detenu, Ganesh @ Racer Ganesh, Son of Radhakrishnan, aged about 22 years. The detenu has been detained by the second respondent by his order in Memo No.55/BCDFGISSSV/2019, dated 28.03.2019, holding 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 also perused the records produced by the Detaining Authority.

3.Though many grounds have been raised in the petition, learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4.According to the learned counsel appearing for the petitioner, insofar as the second and third adverse cases in Crime Nos.124 and 125 of 2019 registered by T-11 Thirunindravur Police Station are concerned, the detenu has filed bail applications before the Judicial Magistrate No.II, Thiruvallur in CrI.M.P.Nos.1023 and 1024 of 2019 and the same are pending as on the date of the passing of the detention order. But, the detaining authority has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in those cases as in a similar case registered by M-4 Red Hills Police Station Cr.No.369/2018 for the offences u/s.341, 294(b), 336, 427, 392,397 and 506(ii) IPC, bail was granted to an accused by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3177 of 2018. This according to the learned counsel appearing for the petitioner is bereft of particulars without cogent materials, which vitiates the impugned order of detention.

5.A perusal of the grounds of detention would show that the detaining authority has arrived at subjective satisfaction that it is very likely of the detenu coming out on bail in the second and third adverse cases and if he comes out on bail he will indulge in such further activities, which are prejudicial to the



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maintenance of public order. Admittedly, in this case, the bail applications filed by the detenu in the second and third adverse cases are pending before the Court concerned. When the bail applications are pending, then there is no presumption that bail would be granted to the detenu. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu would likely to get bail in those cases. The inference has to be drawn from the available material on record. In the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of the detention. Further, the Detaining Authority has also relied on a similar case wherein bail was granted to an accused ; but he has not stated whether the said accused is the co-accused of the detenu herein either in the ground case or in the adverse cases. Hence, the Detaining Authority has passed the impugned detention order in total non-application of mind and the same is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.155/BCDFGISSSV/2019, dated 28.03.2019, passed by the second respondent is set aside. The detenu, Ganesh @ Racer Ganesh, Son of Radhakrishnan, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To:

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Veppery, Chennai - 600 007.



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3. The Superintendent
Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

H.C.P. No.827 of 2019

A.SK(02/08/2019)