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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

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

H.C.P.No.825 of 2019

K.Thilagar

.. Petitioner

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 09.04.2019 in BCDFGISSSV No.177 of 2019 against the petitioner's on Mr.Raji male aged about 32 years, son of Thilagar, 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 father of the detenu and challenge is made to the order of detention dated 09.04.2019 made in BCDFGISSSV No.177 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.

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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 Raji is in remand in H5 New Washermenpet Police Station Cr.No.159/2019, M2 Madhavaram Milk Colony Police Station Cr.Nos.45/2019 and 58/2019 and lodged at Central Prison, Puzhal, Chennai. He has moved a bail application for H5 New Washermenpet Police Station Cr.No.159/2019 before the XV Metropolitan Magistrate Court, George Town in CMP No.3273/2019 and the same was dismissed. He has moved a bail application for M2 Madhavaram Milk Colony Police Station Cr.No.58/2019 before the Principal District and Sessions Court, Thiruvallur in CrI.M.P.No.1749/2019 and the same is pending. He has not moved any bail application for M2 Madhavaram Milk Colony Police Station Cr.No.45/2019 case. The sponsoring authority has stated that the relatives of Thiru Raji are taking action to take him out on bail in M2 Madhavaram Milk Colony Police Station Cr.No.45/2019 and H5 New Washermenpet Police Station Cr.No.159/2019 by filing another bail application before the appropriate Court. In a similar case registered in M2 Madhavaram Milk Colony Police Station Cr.No.17/2019 u/s 147, 148, 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.817/2019. Hence I infer that it is very likely of his coming out on bail in M2 Madhavaram Milk Colony Police Station Cr.No.58/2019 and also there is real possibility of his coming out on bail in M2 Madhavaram Milk Colony Police Station Cr.No.45/2019 and another bail application for H5 New Washermenpet Police Station Cr.No.159/2019 before the appropriate court, since in similar case 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 in M2 Madhavaram Milk Colony Police Station Cr.No.17/2019 u/s 147, 148, 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC and bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.817/2019 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 147, 148, 341, 294(b), 336, 427, 392, 397 & 506(ii) IPC whereas the offence involved in the second adverse case is under Section 379 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 BCDFGISSSV No.177 of 2019 dated 09.04.2019, passed by the second respondent is set aside. The detenu, namely, Raji, S/o.Thilagar, aged about 32 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,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai, Veppery,
Chennai-600 007.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



5. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai - 9.

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SS (CO)

RRS (29/08/2019)