

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.842 of 2019

A.Chitra ... Petitioner

-vs-

- 1.The State of Tamil Nadu
Rep. By Secretary to the Govt,
Home, Prohibition and Excise Department,
Fort St.George,Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai City,
Vepery,
Chennai - 600 007. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records pertaining to the Memo No.932/BCDFGISSSV/2018 dated 10.10.2018 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the petitioner's husband Anbu alias Sarath Kumar, Son of Kasimani, aged 27 years, now confined in the Central Prison, Puzhal, Chennai before this Court and set him at liberty.

WEB COPY

For Petitioner : Mr.Charles Kamalesh
M.Appaji

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 wife of the detenu, Anbu alias Sarath Kumar, Son of Kasimani, aged 27 years. The detenu has been detained by the second respondent by his order in No.932/BCDFGISSSV/2018 dated 10.10.2018, 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.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.In the grounds of detention, the detaining authority, while arriving at the subjective satisfaction, has observed that the detenu has moved bail petitions in respect of the adverse cases in Crime Nos.694 of 2018 and 1025 of 2018 and bail has been granted by the XXIII Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P.Nos.2259 and 2257 of 2018 on 04.10.2018 but the detenu is yet to offer sureties. He has also relied on a similar case registered in R2 Kodambakkam Police Station Cr.No.324 of 2018 for the offence under Sections 341, 294(b), 336, 323, 427, 397 and 506(ii) IPC and bail was granted by the Court of Principal Sessions Judge, Chennai in CrI.M.P.No.8608 of 2018 and observed that there is real possibility of the detenu coming out on bail in the ground case in Crime No.1044 of 2018 and also in the adverse cases, where already bail was granted, by offering sureties. The adverse cases were registered for the offence under Section 392 IPC against the detenu for snatching of gold ornaments, whereas, in the ground case, the offence registered was snatching of cell phone and cash. Therefore, there is non-application of mind on the part of the detaining authority in stating that there is real possibility of the

detenu coming out on bail in the adverse cases registered for the offence under Section 392 IPC, where already bail was granted, by offering sureties. Hence the impugned order of detention is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.932/BCDFGISSSV/2018 dated 10.10.2018 passed by the second respondent is set aside. The detenu, Anbu alias Sarath Kumar, Son of Kasimani, aged 27 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai City,
Vepery,
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 & Order),
Fort Saint George, Chennai - 9.

H.C.P. No.842 of 2019

ks[co]
srg 07/08/2019