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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.865 of 2019

J.Kavitha

.. Petitioner

Vs

1. Government of Tamil Nadu rep. by its
Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2. The District Collector and District Magistrate
Erode District, Erode. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in Cr.M.P.No.03/Goonda/2019/C1 dated 29.01.2019 on the file of the second respondent herein and set aside the same and direct the respondents herein to produce the body of the petitioner's husband/detenu Thiru.Jagan, aged 37 years, son of Kathiresan, now confined in Central Prison, Coimbatore and set him at liberty.

For Petitioner .. Ms.R.Subhadra Devi

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 Jagan, aged 37 years, son of Kathiresan, who is the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P.No.03/Goonda/2019/C1 dated 29.01.2019, 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 also perused the records produced by the Detaining Authority.

3. Amidst several grounds raised, learned counsel for the petitioner pointed out that though the detaining authority has expressed his awareness that the detenu is in remand in the fourth and fifth adverse cases in Crime Nos. 144 of 2018 and 294 of 2018 on the file of Kodumudi Police Station and he has not moved bail petitions in those cases but he moved bail petition in the ground case in Crime No. 297 of 2018 and the same was dismissed by the Judicial Magistrate, Kodumudi, by order dated 03.01.2019 in CrI.M.P.No.4425 of 2018, he inferred that the detenu may come out on bail in the fourth and fifth adverse cases and ground case by filing bail petitions. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention and therefore, subjective satisfaction expressed by the detaining authority is vitiated.

4. For appreciating the contentions raised by the learned counsel for the petitioner, relevant averments in para 5 of the grounds of detention are extracted below:

"5. I am aware that Thiru. Jagan is now lodged at Central Prison, Coimbatore as a remand prisoner in Kodumudi Police Station Crime No. 144/2018 under Section 379 Indian Penal Code altered into under Sections 457, 392 Indian Penal Code, Crime No. 294/2018 under Section 392 Indian Penal Code, Crime No. 297/2018 under Section 392, 506(ii) Indian Penal Code cases and he has not moved any bail petitions in Crime No. 144/2018 and 294/2018 in any Court till the date. But he moved any bail petition in Kodumudi Police Station Crime No. 297/2018 under Sections 392, 506(i) Indian Penal Code before the Judicial Magistrate, Kodumudi and the same was dismissed in Criminal Miscellaneous Petition Number 4425/2018 on 03.01.2019. However, I am aware that it is real possibility coming out on bail in the above cases by filing bail petitions before the concerned Court in future....."

5. The detaining authority, in para 5 of the grounds of detention, while considering the real possibility of the detenu



coming out on bail in the cases in which he was on remand, has referred to the remand of the detenu in the adverse cases and the ground case and proceeded further to observe that the bail petition filed by the detenu in the ground case came to be dismissed and he has not filed bail petitions in the fourth and fifth adverse cases. The detaining authority has not mentioned whether another bail petition has been moved by the detenu or his relatives in respect of the ground case. Therefore, there is no material to show that bail petitions have been moved by the detenu in respect of fourth and fifth adverse cases and another bail petition has been moved by the detenu or his relatives in the ground case. Therefore, the subjective satisfaction arrived by the detaining authority is not supported by material and it vitiates the order of detention. On this ground alone, the order of detention is vitiated and liable to be set aside.

6. Accordingly, the impugned detention order passed by the 2nd respondent, detaining the detenu, namely, Jagan, aged 37 years, son of Kathiresan made in Cr.M.P.No.03/Goonda/2019/C1 dated 29.01.2019 is quashed and the Habeas Corpus Petition is allowed. The above named detenu, who is detained in the Central Prison, Coimbatore is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort Saint George, Chennai-600 009.
2. The District Collector and District Magistrate
Erode District, Erode.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



5. The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George, Chennai-600 009.

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VSN II (CO)
GMY (21/08/2019)