

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

Coram

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

H.C.P.No.845 of 2019

Anitha, F/A 24 years,
W/o Rajesh,
No.7, 7th Cross Street,
Thiyagi Sathiyamoorthy Nagar,
Thiruvottiyur, Chennai-600 019. Petitioner

Vs.

1.The State of Tamil Nadu
Rep.by The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Police,
Greater Chennai,
Chennai. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus, calling for the records relating to the detention order in Memo No.167/BCDFGISSSV/2019 dated 04.04.2019 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and directing the respondents to produce the petitioner's husband Rajesh S/o Kailasam aged about 34 years, the detenu now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

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For Petitioner .. Mr.M.Kaveri Selvam

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 and challenge is made to the order of detention dated 04.04.2019 made in Memo No.167/BCDFGISSSV/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, Cyber Law Offenders, Drug-Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand offenders, Sexual 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.

3.The main argument of the learned counsel appearing for the petitioner is that when there is no bail application filed on behalf of the detenu in the ground case, nor by the relatives of the detenu, there is no imminent possibility of him being released on bail and therefore, the impugned order has been passed without any supporting material and the same has to be set aside.

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 Rajesh is in remand in M1 Madhavaram Police Station Cr.Nos.115/2019 and 162/2019 and lodged at Central Prison, Puzhal, Chennai. He has moved a bail application for Madhavaram Police Station Cr.No.115/2019 before the Judicial Magistrate Court, Thiruvottriyur in CMP.No.1663/2019 and the same is pending. He has not moved any bail application for M1 Madhavaram Police Station Cr.No.162/2019. The sponsoring authoirty has stated that the relatives of Thiru Rajesh are taking action to take him on bail in Madhavaram Police Station Cr.No.162/2019 by filing bail application before the appropriate Court. In a similar case registered under Section 147, 148, 341, 294(b), 336, 427, 392, 297 & 506(ii) IPC in M1 Madhavaram Police Station Cr.Nos.17/2019 bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.817/2019. Hence, I infer that it is very

likely of his coming out on bail in M1 Madhavaram Police Station Cr.No.115/2019 and also there is real possibility of his coming out on bail in M1 Madhavaram Police Station Cr.No.162/2019 by filing bail application before the appropriate Court, since in similar cases bail is granted by the Court after a lapse of time. If she comes out on bail, she 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 clear that the detenu has not moved any bail application in respect of ground case. When that being so, the detaining authority, based on the statement of the sponsoring authority to the effect that the relatives of the detenu are taking steps to take the detenu on bail in the ground case i.e. Madhavaram Police Station Cr.No.162/2019 by filing bail application before the appropriate Court and in a similar case registered under Section 147, 148, 341, 294(b), 336, 427, 392, 297 & 506(ii) IPC in M1 Madhavaram Police Station Cr.Nos.17/2019 bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.817/2019, has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the said cases by filing bail applications and clamped the detention order. Thus, it is clear that the detaining authority, without considering the same, has passed the impugned detention order without any supporting material and the same is, therefore, vitiated.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.167/BCDFGISSSV/2019 dated 04.04.2019 passed by the second respondent is set aside. The detenu, namely, Rajesh, S/o Kailasam, aged about 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

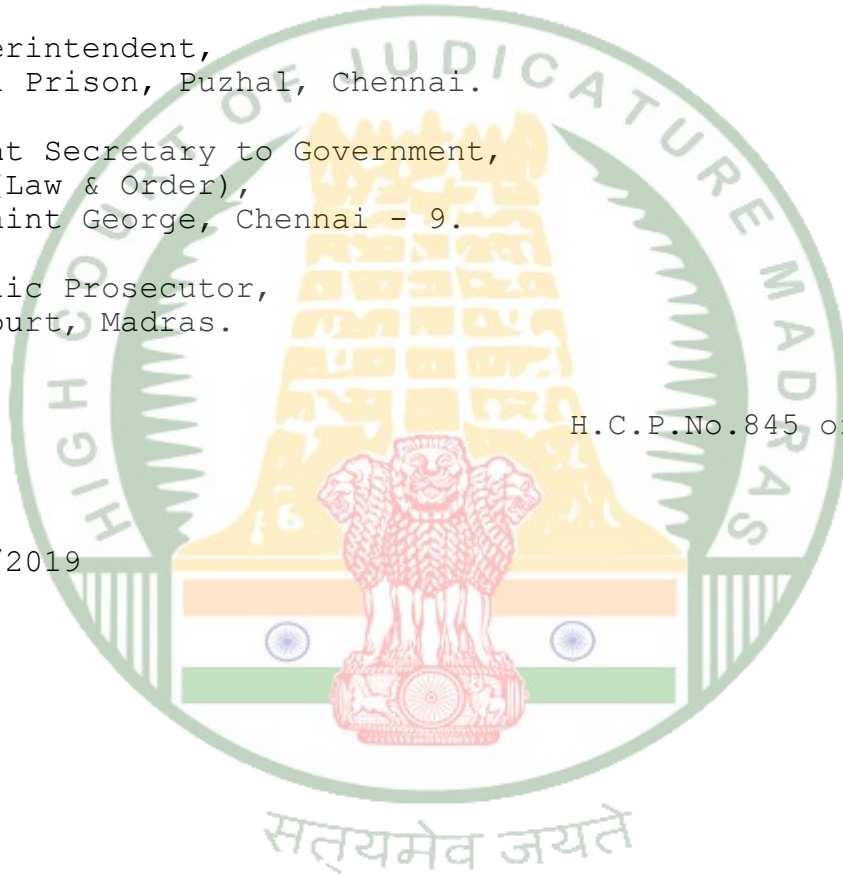
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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Chennai-600 007.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.845 of 2019

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