

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

Coram

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

H.C.P. No.881 of 2019

C.Prabu Doss

... Petitioner

-vs-

1.The District Collector and District Magistrate
Vellore District,
Vellore.

2.The Secretary to Government,
Government of Tamil Nadu (Home),
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the impugned order C3/D.O.No.28/2019 dated 21.03.2019 on the file of the first respondent herein and set aside the same as illegal and direct the respondents to produce the detenu namely Vijayan, Son of Chinnadurai, Hindu aged about 35 years, now confined at Central Prison, Vellore, Vellore District, before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodh Kumar

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 brother of the detenu Vijayan, Son of Chinnadurai, aged about 35 years. The detenu has been detained by the first respondent by his order in C3/D.O.No.28/2019 dated 21.03.2019, holding to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 mainly focused his argument on the ground that when there is no bail application filed on behalf of the detenu, 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. Hence the impugned order of detention is liable to be quashed.

4.Learned Additional Public Prosecutor submitted that though the detenu has not obtained bail in the solitary case, considering the nature of allegation made, this petition will have to be dismissed.

5.From a perusal of the grounds of detention, we find that the detenu is involved in solitary case and he has not filed any bail petition. In the said case, charge sheet has already been filed and the matter is pending trial.

6.To be noted, we are concerned with the legality of the detention order in this case.

7.On a careful scrutiny of the impugned order, it is seen that the detaining authority, taking into account the imminent possibility of the detenu being enlarged on bail and the likelihood of the same is prejudicial to the public order and peace, has passed the impugned detention order. A close reading of the entire booklet would show that the detaining authority has taken a decision to detain the detenu on the presumption that there is most likely that the detenu may come out on bail by filing bail application but no particulars have been furnished to that effect. Therefore, the detention order has

been passed without any valid material, which shows clear non application of mind on the part of detaining authority in arriving at such conclusion. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained.

8.In the result, the Habeas Corpus Petition is allowed and the order of detention in C3/D.O.No.28/2019 dated 21.03.2019 passed by the first respondent is set aside. The detenu, Vijayan, Son of Chinnadurai, aged about 35 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

mmi/ssm
To

- 1.The District Collector and District Magistrate
Vellore District,
Vellore.
- 2.The Secretary to Government,
Government of Tamil Nadu(Home),
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009
- 3.The Superintendent,
Central Prison, Vellore.
- 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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A.SK(05/09/2019)