

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

Coram

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

H.C.P. No.898 of 2019

Devi ... Petitioner/Wife of the Detenu

-vs-

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009
- 2.District Collector and District Magistrate,
Vellore District,
Vellore. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 29.04.2019 in C3/D.O.No.30/2019 against the petitioner's husband Vijayakumar, Male, aged 29 years S/o. Elumalai, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Ms.V.Saradha Devi
: Government Advocate
(Crl. Side)

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of the detenu Vijayakumar, S/o. Elumalai, Male, aged 29 years. The detenu has been detained by the second respondent by his order in C3/D.O.No.30/2019 dated 29.04.2019, 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 Government Advocate 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 the case relied on by the detaining authority is not similar in nature and the offences in the 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.For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru.Vijayakumar has filed a bail application in ground case Thimiri Police Station Cr.No.122/2019, u/s man missing @ 364, 302 IPC before the Court of Principal Sessions Judge, Vellore in CrI.M.P.No.1770/2019 and the same is pending before the Court. As far as the ground case is concerned, in a similar case registered at Kanchi Taluk police station crime No.15/2016, under Section 147, 148, 506 (ii), 302 IPC@ 120 B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused Tvl.K.Sandhar, S/o. Kuppan and Moses, S/o. Joseph by the Court of Hon'ble Sessions Court - II, Kanchipuram in CrI.M.P.No.600/2016 on 06.04.2016.As bails are being granted by courts in such cases, there is real possibility of his (Thiru Vijayakumar) coming out on bail, in the above pending bail application, before this Court. If he enlarge himself on bail, he will indulge in further activities, which will be prejudicial to be maintenance of public order....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration in a similar case registered at Kanchi Taluk police station crime No.15/2016, under Section 147, 148, 506(ii), 302 IPC@ 120 B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC bail was granted to the accused Tvl.K.Sandhar, S/o. Kuppan and Moses, S/o. Joseph by the Court of Hon'ble Sessions Court - II, Kanchipuram in CrI.M.P.No.600/2016 on 06.04.201, 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, 506(ii), 302 IPC@ 120 B, 147, 148, 506(ii), 302 IPC and 149, 109, 114 IPC whereas the offences involved in the ground case are under Sections 364 and 302 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 C3/D.O.No.30/2019 dated 29.04.2019, passed by the second respondent is set aside. The detenu, namely, Vijayakumar, S/o. Elumalai, Male, aged 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

mmi/ssm
To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009
2. District Collector and District Magistrate,
Vellore District,
Vellore.

3.The Superintendent,
Central Prison,Vellore.

4.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 898 of 2019

A.SK(05/09/2019)



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