

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

Coram

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

H.C.P. No.920 of 2019

Poongavanam

... Petitioner

-vs-

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

2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai. - 7

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in Memo NO.639/BCDFGISSSV/2018 passed by the 2nd respondent on 02.08.2018 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce Poongavanam, Son of Palani, aged about 24 years, before this Court, who now detained in Central Prison, Puzhal - II, Chennai and set him at liberty.

For Petitioner : Mr.A.Elumalai

For Respondents : Mr.R.Prathap Kumar
: Addl. Public
Prosecutor

ORDER

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

The petitioner, Poongavanam, Son of Palani, aged about 24 years, is the detenu. The detenu has been detained by the second respondent by his order in Memo No.639/BCDFGISSSV/2018 dated 02.08.2018, 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 second and third adverse cases 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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru Poongavanam is in remand in K-8 Arumbakkam Police Station Crime Nos. 198/2018, 324/2018 and 341/2018. he has not moved any bail application for K-8 Arumbakkam Police Station Crime Nos. 198/2018, 324/2018 and 341/2018 so far. The sponsoring authority has stated that relatives of Thiru Poongavanam is taking action to take him out on bail by filing bail application for K-8 Arumbakkam Police Station Crime Nos. 198/2018, 324/2018 and 341/2018 before the appropriate Court. It is pertinent to note that in a case registered at K-11, CMBT Police Station Cr.No.212/2016 under Sections 397 IPC bail was granted by the Court of V Metropolitan Magistrate Court, Egmore, Chennai - 03 in CrI.M.P.No. 620/2016. It is pertinent to note that in a similar case registered at P-6, Kodungaiyur Police Station Cr.No.656/2016 under Sections 341,294(b), 392,336,427,397 and 506(ii) IPC bail was granted by the Court of Principal Sessions at Chennai in CrI.M.P.No. 5852/2016. Hence, I infer that there is real possibility of his coming out on bail in K-8 Arumbakkam Police Station Crime Nos. 198/2018, 324/2018 and 341/2018 by filing bail application before the appropriate court since in similarly placed cases bails are granted by courts after a lapse of time. If he comes out 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 P-6, Kodungaiyur Police Station Cr.No.656/2016 under Sections 341,294(b), 392,336,427,397 and 506(ii) IPC and bail was granted by the Court of Principal Sessions at Chennai 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 341,294(b), 392,336,427,397 and 506(ii) IPC whereas the offences involved in the second and third adverse cases is under Section 379 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 Memo No.639/BCDFGISSSV/2018 dated 02.08.2018, passed by the second respondent is set aside. The detenu, namely, Poongavanam, Son of Palani, aged about 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

- 1.The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat,
Fort St. George, Chennai - 600 009
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai. - 7
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 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.920 of 2019

SV(CO)
SP(28/08/2019)



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