

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

Coram

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

H.C.P.No.945 of 2019

Arokiadass

.. Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. District Collector and
District Magistrate,
Vellore District, Vellore - 9.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to call for the records in connection with the order of detention passed by the second respondent dated 06.05.2019 in C3/D.O.No.34/2019 against the petitioner friend Bakkiyaraj, male, aged 37 years, S/o.Sowriyar 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..

Mr.C.Iyyappa Raj,
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the friend of the detenu and challenge is made to the order of detention dated 06.05.2019 made in C3/D.O.No.34/2019, passed by the second respondent under which the detenu has been branded as a 'Bootlegger' and detained under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand 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 the case relied on by the detaining authority is not similar in nature and the offence 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 Bakkiyaraj filed a bail application in ground case Ranipet Prohibition Enforcement Wing Crime No.130/2019 u/s. 4(1)(aaa), 4(1-A) ii TNP Act 1937 r/w 420 IPC and Section 6, 7 Tamil Nadu Rectified Spirit Rules 2000 before the Court of the Principal Sessions Judge, Vellore in CrI.M.P.No.2003/2019 and the same is pending before the Court. As far as the ground case is concerned, in a similar case registered in Ranipet Prohibition Enforcement Wing Cr.No.514/2017 U/s. 4(1)(aaa), 4(1-A) ii Tamil Nadu Prohibition Act r/w Sec. 7 of Tamil Nadu Rectified Spirit Rules, 2000 bail was granted by the Principal Sessions Court, Vellore in CrI.M.P.No.4828/2017 to one Tmt.Amudha on 21.12.2017. As bails are being granted by courts

in such cases, there is a real possibility of his (Thiru Bakkiyaraj) coming out on bail in the above pending bail application before the Court....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Ranipet Prohibition Enforcement Wing Cr.No.514/2017 U/s. 4(1)(aaa), 4(1-A) ii Tamil Nadu Prohibition Act r/w Sec. 7 of Tamil Nadu Rectified Spirit Rules, 2000 and bail was granted by the Principal Sessions Court, Vellore in Crl.M.P.No.4828/2017 to one Tmt.Amudha on 21.12.2017 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 4(1)(aaa), 4(1-A) ii Tamil Nadu Prohibition Act r/w Rule 7 of Tamil Nadu Rectified Spirit Rules, 2000 whereas the offences involved in the ground case are under Sections 4(1)(aaa), 4(1-A) ii TNP Act 1937 r/w 420 IPC and Rules 6, 7 Tamil Nadu Rectified Spirit Rules 2000. 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.34/2019 dated 06.05.2019, passed by the second respondent is set aside. The detenu, namely, Bakkiyaraj, male, aged 37 years, S/o.Sowriyar, 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

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To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and
District Magistrate,
Vellore District, Vellore - 9.

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.

A.SK(25/09/2019)

H.C.P.No.945 of 2019



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