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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

Coram

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

H.C.P.No.953 of 2019

G.Murugan

.. Petitioner

Vs

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

2.District Collector and District
Magistrate,
Kancheepuram District,
Kancheepuram.

.. 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 27.04.2019 in BCDFGISSSV No.29/2019 against the petitioner's friend Viswa @ Viswanathan @ Kulla, male, aged 29 years, S/o.Anbazhagan, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

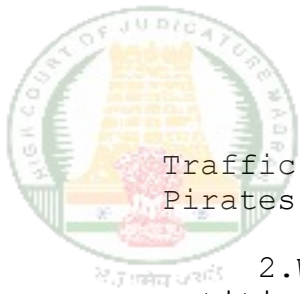
For Petitioner .. Mr.S.Senthil Vel

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 friend of the detenu and challenge is made to the order of detention dated 27.04.2019 made in BCDFGISSSV No.29/2019, 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, 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 cases relied on by the detaining authority are 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 accused Thiru. Viswa @ Viswanathan @ Kulla S/o. Anbazhagan was surrendered in Sriperumbudur PS Cr.No.68/2019 on 12.02.2019 before the court of Judicial Magistrate I, Tiruchirappalli ordered to be remanded upto 14.02.2019 and lodged at Central Prison, Tiruchirappalli as a remanded prisoner also ordered to be produced on that day before the Court of District Munsif cum Judicial Magistrate, Sriperumbudur. Meanwhile he was taken on police custody by filing an affidavit before the Court of District Munsif cum Judicial Magistrate, Sriperumbudur in between 14.02.2019 and 18.02.2019 interrogated in the above case then he was relodged before the above court on 18.02.2019 and lodged at Central Prison, Puzhal, Chennai - 600 066 as a remand prisoner. His remand period was periodically extended upto 09.05.2019. Meanwhile the mother of the accused Tmt. Rukku W/o Anbazhagan has given a statement u/s 161 (3) Cr.P.C. on 25.04.2019 that due to their family financial circumstances they are not in a position to file a bail petition in the above case on behalf of her son and in due course of time she will try to file a bail petition before any appropriate court after making consultation with her counsel. In this circumstances, if he will be released on bail again he will indulge in the activities prejudicial to the maintenance of public peace and public order. However in similar nature of offence the similar accused had released on bail by filing a bail petition through proper court i.e. In Vishnu Kanchi Police Station Cr.No.1179/2015 u/s 147, 148, 302 IPC accused Thiru. Balaji and Thiru. Suresh were released on bail



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through District Sessions Court II, Kancheepuram in C.M.P.No.1933/2015 dt. 21.12.2015. In Manimangalam Police Station Cr.No.236/2013 u/s 294(b), 386, 506(ii), 307 IPC r/w 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 accused Thiru.Thiyagarajan S/o. Palayam was released on bail through Principal District Sessions Court, Chengalpattu in Crl.M.P.No.3209/2013 dt. 27.08.2013....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration similar cases registered in Vishnu Kanchi Police Station Cr.No.1179/2015 for the offence punishable under Sections 147, 148, 302 IPC and in Manimangalam Police Station Cr.No.236/2013 u/s 294(b), 386, 506(ii), 307 IPC r/w 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and bail was granted by District Sessions Court II, Kancheepuram in C.M.P.No.1933/2015 dt. 21.12.2015 and Principal District Sessions Court, Chengalpattu in Crl.M.P.No.3209/2013 dt. 27.08.2013 respectively 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 cases relied on by the authority was registered for the offences under Sections 147, 148, 302 IPC and 294(b), 386, 506(ii), 307 IPC r/w 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 respectively whereas the offences involved in the ground case are under Sections 147, 148, 448, 324, 302, 506(ii) IPC r/w 3 (1) of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar cases 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 BCDFGISSSV No.29/2019 dated 27.04.2019, passed by the second respondent is set aside. The detenu, namely, Viswa @ Viswanathan @ Kulla, S/o.Anbazhagan, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CS-III)

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.District Collector and District
Magistrate,
Kancheepuram District,
Kancheepuram.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

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

H.C.P.No.953 of 2019

JP(CO)
SP(12/09/2019)