

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.948 of 2019

Kanchana

... Petitioner

-vs-

1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009

2.District Collector & District Magistrate,
Vellore District,
Vellore.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent 07.05.2019 in Memo No.C3/D.O.No.38/2019 against the petitioner's son Srinivasan @ Seenu, Male, aged 23 years, S/o. Sivakumar, 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

ORDER

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

The petitioner is the mother of the detenu, Srinivasan @ Seenu, S/o. Sivakumar, male, aged about 23 years. The detenu has been detained by the second respondent by his order in Memo No.C3/D.O.No.38/2019 dated 07.05.2019, 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 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 ground case are totally different and there is no reference about the bail application filed in the adverse cases. 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 Srinivasan @ Seenu has not filed any bail application before any court in ground case in Katpadi Police station Crime No.192/2019 u/s 341, 294(b), 323, 307, 392, 397, 506 (ii) IPC r/w Section 3 Tamil Nadu Property (Prevention of Damage and Loss) Act 1992. As far as the ground case is concerned, in a similar case registered at Vellore North Crime police station Cr.No.200/2017, under Section 294(b), 394, 397, 506(ii) IPC bail was granted to the accused Thiru. Nandhu @ Nandhakumar by the Court of the Principal District Judge, Vellore in CrI.M.P.No.2714/2017 on 07.07.2017. As bail are being granted by courts in such cases, there is most likely that he (Thiru.Srinivasan @ Seenu) may coming out of bail, by filing any bail application in any court. 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 Vellore North Crime police station Cr.No.200/2017, under Section 294(b), 394, 397, 506(ii) IPC bail was granted to the accused Thiru. Nandhu @ Nandhakumar by the Court of the Principal District Judge, Vellore in CrI.M.P.No.2714/2017 on 07.07.2017 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 Sections 294(b), 394, 397, 506(ii) IPC

whereas the offences involved in the ground case are under Section u/s 341, 294(b), 323, 307, 392, 397, 506(ii) IPC r/w Section 3 Tamil Nadu Property (Prevention of Damage and Loss) Act 1992. 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.C3/D.O.No.38/2019 dated 07.05.2019, passed by the second respondent is set aside. The detenu, namely, Srinivasan @ Seenu, S/o. Sivakumar, male, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009
- 2.The District Collector & District Magistrate,
Vellore District,
Vellore.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Joint Secretary to Govt.,
Public Law & Order Dept.,
Fort St.George, Chennai-9
- 5.The Public Prosecutor,
High Court, Madras.

VSN II(CO)
CB(10/10/2019)

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