

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

Coram

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

H.C.P. No.988 of 2019

Kanimozhi ... Petitioner/Wife of the detenu

-vs-

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

2.The District Collector and District Magistrate,
Collector's Office,
Coimbatore City,
Coimbatore - 641 018 ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records relating to the detention order dated 09.05.2019 by the second respondent in his proceedings No. Cr.M.P.No.13/G/2019/E1 and quash the same and direct the respondent herein to produce the detenu namely Sathishkumar, son of Thangaraj, aged about 29 years, residing at No.844, Nellukuzhi Kadu, Vadakkadu, Ottanchathiram Taluk, Dindigal District, who is presently under going detention in the Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.A.Vinoth Kumar

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 wife of the detenu - Sathishkumar, son of Thangaraj, aged about 29 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.13/G/2019/E1 dated 09.05.2019, holding him 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.Amidst several grounds raised by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focused his argument on the ground that though the detaining authority has observed that the bail petition filed by the detenu before the Judicial Magistrate Court No.2, Pollachi in the ground case has been returned with a direction to move the same before the District and Sessions Court and the detenu has not filed another bail petition for the said case before the Sessions Court, he inferred that the detenu may come out on bail in the ground case. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention and therefore, subjective satisfaction expressed by the detaining authority is vitiated.

4.For appreciating the contentions raised by the learned counsel for the petitioner, relevant averments in para 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru.Sathishkumar, aged 29, S/o.Thangaraj residing at Door No.844, Nellukulikadu, Vadakadu, Vadakadu, Oddanchatram Taluk, Dindigul District, is in judicial remand in respect of the case in Coimbatore District, Gomangalam Police Station Crime No.51/2019 u/s 302 Indian Penal Code and he is lodged at Central Prison, Coimbatore. Further, it is revealed from the confession statement of Thiru.Sathishkumar given on 07.04.2019 that, on 06.04.2019 a case in Coimbatore District, Gomangalam Police Station Crime No.51/2019 was registered against Thiru.Sathishkumar. Further, Thiru.Sathishkumar has filed bail application in Gomangalam Police Station Crime No.51/2019 u/s. 302 Indian Penal Code before the Court of Judicial Magistrate Court No.2, Pollachi and the same was returned by the Judicial Magistrate No.2, Pollachi on

29.04.2019 directing to file the petition before the District Sessions Court. Further in a case registered in Coimbatore District, Negamam Police Station Crime No.197/2014 u/s 302 IPC, the conditional bail was granted to Thiru.Antony by the court of Principal District and Sessions Judge, Coimbatore vide C.M.P.No.1900/2014 dated 26.06.2014, since there is a real possibility of Thiru.Sathishkumar to be released on bail by filing bail application before appropriate court in the case of Coimbatore District, Gomangalam Police Station Crime No.51/2019 u/s. 302 Indian Penal Code....."

5.The detaining authority, in para 5 of the grounds of detention, while considering the real possibility of the detenu coming out on bail in the case in which he was on remand, has referred to the remand of the detenu in the ground case and proceeded further to observe that the bail petition filed by the detenu in the ground case before the Judicial Magistrate Court No.2, Pollachi was returned by the Magistrate with a direction to file the petition before the District Sessions Court. The detaining authority has not mentioned whether another bail petition has been moved by the detenu or his relatives in respect of the ground case before the Sessions Court. Therefore, there is no material to show that another bail petition has been moved by the detenu or his relatives in the ground case. Therefore, the subjective satisfaction arrived by the detaining authority is not supported by material and it vitiates the order of detention. On this ground alone, the order of detention is vitiated and liable to be set aside.

6.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.13/G/2019/E1 dated 09.05.2019, passed by the second respondent is set aside. The detenu, Sathishkumar, son of Thangaraj, aged about 29 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 to Govt,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai - 600 009

2.The District Collector and District Magistrate,
Collector's Office,
Coimbatore City,
Coimbatore - 641 018

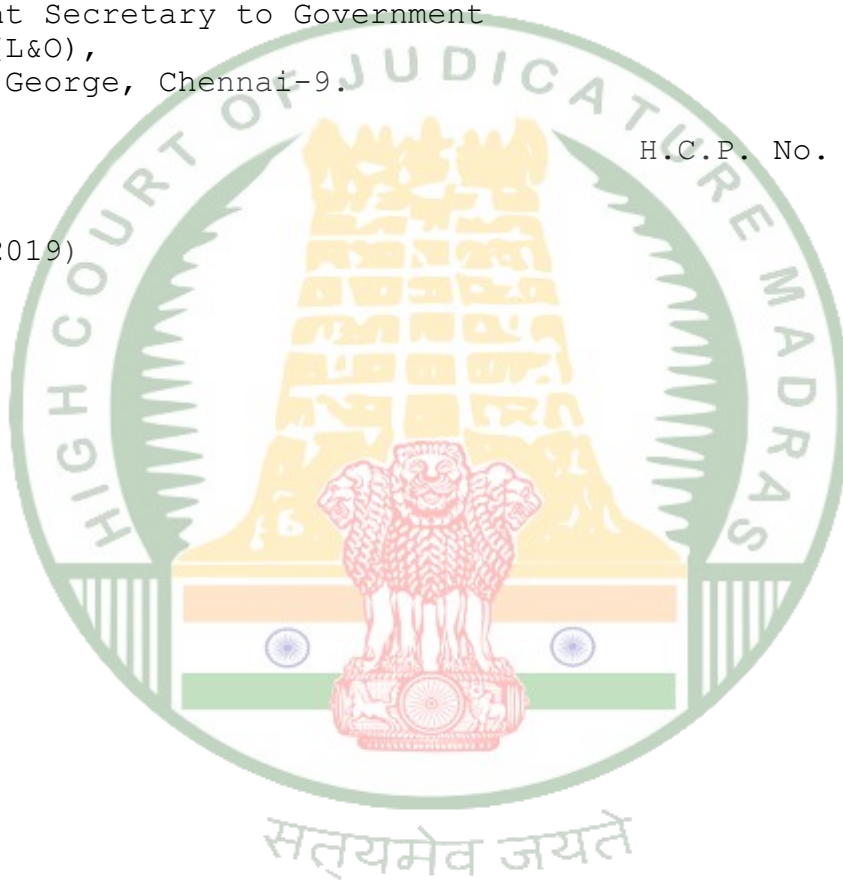
3.The Superintendent,
Central Prison,Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Government
Public (L&O),
Fort St.George, Chennai-9.

H.C.P. No. 988 of 2019

SJ(CO)
CB(10/10/2019)



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