

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

Coram

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

H.C.P. No. 989 of 2019

A.Tamilarasi

... Petitioner

-vs-

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

2.The District Collector and
District Magistrate, Perambalur District,
Perambalur.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 09.05.2019 in Cr.M.P.No.09/2019 against the petitioner's husband Arul, son of Paramasivam aged about 37 years, who is confined at Central Prison, Tiruchirappalli and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.V.Balu

For Respondents : Mr.Natarajan
Public Prosecutor
: for 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, Arul, son of Paramasivam aged about 37 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.09/2019 dated

09.05.2019 holding to be a "Cyber Law Offender", as contemplated under Section 2(gg) 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. Learned counsel appearing for the petitioner submitted that there are five adverse cases against the detenu apart from the ground case. The five cases are punishable under the purview of Indian Penal Code. In the ground case, the detenu is involved in cyber law offence. However, the detention order proceeds as if the offence has been committed under Section 2(gg) of the Act 14 of 1982. There is non-application of mind and the arrest was shown through PT warrant. There is no intimation to the relatives of the detenu. The subsequent arrest was intimated through SMS which is also without naming anybody. Such a procedure has also been deprecated by this Court. There is a huge delay in considering the representations dated 10.05.2019 and 16.05.2019 and representations are yet to be considered. There is non-application of mind in relying upon the similar order said to have been granted already. For the very same offence in the ground case, a co-accused has been enlarged on bail. However, the offence involved in any other previous case. Thus, there is non-application of mind in passing the detention order since the detenu is stated to have been involved in at least five previous cases. In such view of the matter, the detention order requires to be interfered with.

4. Learned Public Prosecutor appearing for the State would submit that the allegations against the detenu are very serious. He was involved in scores of previous cases. Even in the ground case, a statement has been obtained from the victim under Section 164 Cr.P.C. He is misusing his position as lawyer though he is not practising. Considering the facts involved, this petition will have to be dismissed.

5. We are concerned with the habeas corpus petition and therefore we cannot go into the fact but only on the procedural violation involved. On a perusal of the detention order, it appears that satisfaction has been expressed on the ground that the detenu is a cyber law offender as contemplated under Section 2(gg) of Act 14 of 1982. The aforesaid Act deals bootleggers and goondas and therefore he cannot be brought under the purview of cyber law offender. Thus, there is non application of mind on the part of the detaining authority.

6. Apart from the same, on a perusal of the records, we find that a similar case relied upon by the detaining authority is also not similar. Though the similar case involves co-accused in the ground case, based upon which the detention order is passed, he was not having previous case as against the detenu before us. Thus, the similar case relied upon is not similar to the ground case.

7. Insofar as the ground raised by the petitioner on non-application of mind, we are not inclined to set aside the order as we do not find any non-application of mind as the said mistake has been rectified on the next day itself with due intimation to the detenu. Therefore, on this ground, we are not inclined to set aside the detention order.

8. The arrest intimation has also been sent through SMS. The representations made by the petitioner on 10.05.2019 and 16.05.2019 are yet to be disposed of. Even they are disposed of subsequently there appears to be huge delay.

9. Considering the above, we are inclined to set aside the detention order. Accordingly, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.09/2019 dated 09.05.2019, passed by the second respondent is set aside. The detenu, Arul, son of Paramasivam aged about 37 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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and
District Magistrate, Perambalur District,
Perambalur.

3. The Superintendent,
Central Prison, Trichy.

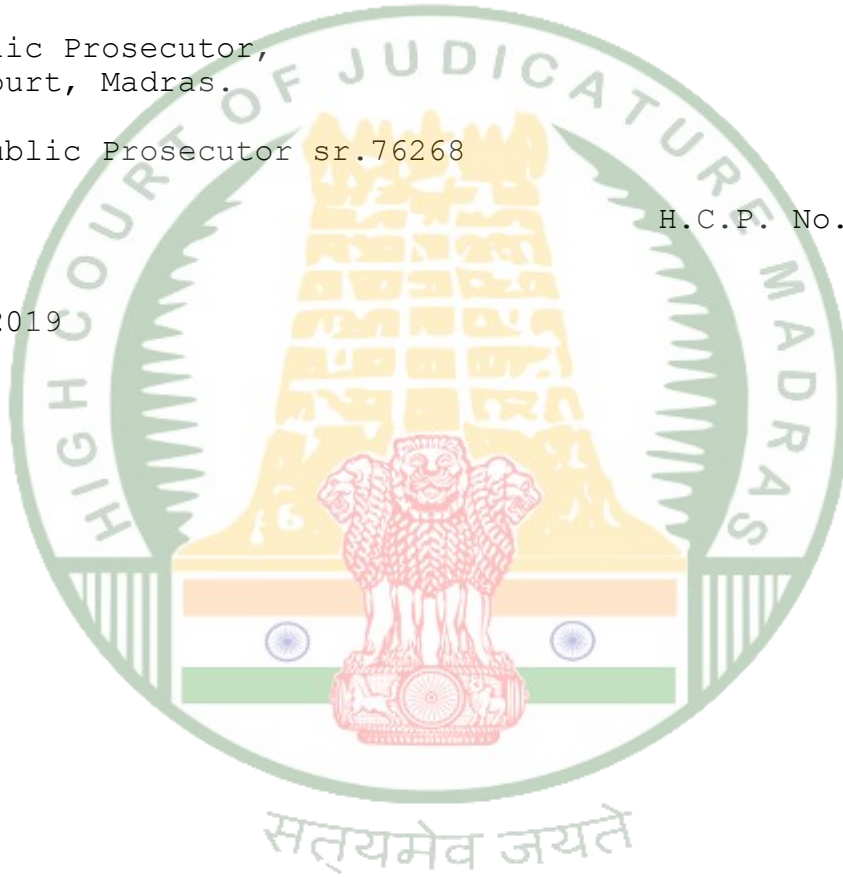
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Public Prosecutor sr.76268

H.C.P. No.989 of 2019

ppa(co)
nr 17/10/2019



WEB COPY