

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M. NIRMAL KUMAR

H.C.P. No.1052 of 2019

Gowthaman ...Petitioner/Father of the Detenu

-Vs-

1.State of Tamil Nadu

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

2.The Commissioner of Police,

Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.

...Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in Memo No.230/BCDFGISSSV/2019 passed by the second respondent on 08.05.2019, on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce Ranjithraj, Son of Gowthaman, aged about 22 years, before this Court, who now detained in Central Prison, Puzhal II, and set him at liberty.

For Petitioner : Mr.A.Elumalai

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 father of the detenu, Ranjithraj, Son of Gowthaman, aged about 22 years. The detenu has been detained by the second respondent by his order in Memo No.230/BCDFGISSSV/2019, dated 08.05.2019 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. 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 4 of the grounds of detention are extracted below:

"4.I am aware that Thiru Ranjithraj is in remand in C3 Seven Wells Police Station Cr.No.92/2019 and lodged at Central Prison, Puzhal, Chennai. He has moved a bail application for C-3 Seven Wells Police Station Cr.No.92/2019 before the Court of Principal Sessions, Chennai in Crl.MP.No.8974/2019 and the same is pending. In a similar case registered u/s 341,294 (b),336,427,392,397 & 506(ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.MP.No.3177/2018. Hence I infer that it is very likely of his coming out on bail in C3 Seven Wells Police Station Cr.No.92/2019 case, since in similar cases bail is granted by the court after a lapse of time. 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 u/s 341,294(b),336,427,392,397 & 506 (ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.MP.No.3177/2018 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 341,294(b),336,427,392,397 & 506(ii) IPC whereas the offences involved in the ground case are under Section u/s 294(b), 341, 336, 427, 397 and 506(ii) IPC. 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.230/BCDFGISSSV/2019, dated 08.05.2019, passed by the second respondent is set aside. The detenu, namely, Ranjithraj, Son of Gowthaman, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

mmi/ssm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Department of Home, Prohibition and Excise,
Secretariat,
Fort St.George, Chennai - 600 009
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai - 7.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No.1052 of 2019

Kak(28/09/2019)

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