

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.1026 of 2019

Farana ... Petitioner/Wife of the Detenu

-vs-

1.State of Tamil Nadu
Rep. By The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009

2.The Commissioner of Police,
Greater Chennai,
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 relating to the detention order in Memo No.211/BCDFGISSSV/2019 dated 06.05.2019 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Sawber Sadiq S/o. Mohammed Rafeeq, aged about 29 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Sawber Sadiq, S/o. Mohammed Rafeeq, aged about 29 years the detenu herein at liberty.

For Petitioner : Mr.R.Muthukumar

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, Sawber Sadiq, S/o. Mohammed Rafeeq, aged about 29 years. The detenu has been detained by the second respondent by his order in Memo No.211/BCDFGISSSV/2019, dated 06.05.2019 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 second adverse case and 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. Sawber Sadiq is in remand in G3 Kilpauk Police Station Crime Nos. 87/2019 and 106/2019. He has moved a bail application for G-3 Kilpauk Police Station Crime No.87/2019 before the Court of Principal Sessions Judge, Chennai in CrI.M.P.No.7143/2019 and the bail was dismissed on 10.04.2019. And, he has moved a bail application for G-3 Kilpauk Police Station Crime No.87/2019 before the High Court at Madras, in CrI.O.P.No.10681/2019 and the bail was pending. He has moved a bail application before the Principal Sessions Judge Court, Chennai in CrI.M.P.No.7833/2019 for G3 Kilpauk Police Station Cr.No.106/2019 and the bail was granted on 24.04.2019. He is not yet offer sufficient sureties in the case and still in prison. In a similar case registered at P-1 Pulianthope Police Station Crime No.179/2018 u/s 147,148,341,294(b),323,394 and 506(ii) IPC bail was granted by the Court of 5th Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.1422/2018. 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 P-1 Pulianthope Police Station Crime No.179/2018 u/s 147,148,341,294(b),323,394 and 506(ii) IPC bail was granted by the Court of 5th Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.1422/2018 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 147,148,341,294(b),323,394 and 506(ii) IPC whereas the offences involved in the second adverse case are under Sections 148, 294(b), 323, 336, 427, 307 and 506(ii) IPC and the offences involved in the ground case are under Sections 363, 392 r/w 394 r/w 395 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.211/BCDFGISSSV/2019, dated 06.05.2019, passed by the second respondent is set aside. The detenu, namely, Sawber Sadiq, S/o. Mohammed Rafeeq, 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

mni/ssm

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 7.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government
Public(Law and order)
Fort. St. George
Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P. No.1026 of 2019

VGI(CO)
SP(03/10/2019)