

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM

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

H.C.P. No. 1016 of 2019

Amsa

... Petitioner

-vs-

1.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009

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

3.State Rep.by
The Inspector of Police,
Arni Taluk Police Station, Arni,
Tiruvannamalai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in D.O.No.30/2019-C2 on the file of the second respondent to produce the petitioner's son detenu Thiru. Jothi, son of Muniyappan, aged about 34 years, now confined at Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.L.Venkatesan

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, Jothi, son of Muniyappan, aged about 34 years. The detenu has been detained by the second respondent by his order in D.O.No.30/2019-C2 dated 22.05.2019 holding to be a "Sand 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.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 5 of the grounds of detention are extracted below:

"5 I am aware that Thiru. Jothi, was remanded in Central Prison, Vellore in connection with the ground case in Arni Taluk Police Station Cr.No.385/2019 u/s 307,379,430,353 IPC r/w 21(5) Tamil Nadu Mines and Mineral Development and Regulations Act 1957 and Sec 3 (2) of Tamil Nadu Property (Prevention of Damages & Loss) Act,1992. Further I submit that a bail petition has been filed on behalf of the accused Thiru. Jothi and Thiru. Annachi before Hon'ble District Session Court in Cr.M.P.No.2133/2019 dated 14.05.2019 and it has ordered to be called on 29.05.2019. Further I submit that a writ petition has been filed by Tmt. Gowthami W/o Annachi before High Court, Chennai in W.P No.14575/2019 dated 14.05.2019 and it is pending in the above court. Further I am also aware that in a similar case registered in Polur Police Station in Cr.No.277/2018 under Section 379, 430 IPC against the accused Selvaraj and Sundar, a bail application was filed on behalf of the accused Thiru. Selvaraj in Hon'ble Judicial Magistrate Court, Polur in Cr.M.P.No.2334/2018 and the bail was granted on 11.04.2018 and an anticipatory bail application was filed on behalf of the co-accused Thiru. Sundar before Hon'ble Vacation Court Judge, Tiruvannamalai in Cr.M.P.No.1671/2018 and it was granted on 24.05.2018. Hence, I infer that there is a real possibility of him (Thiru. Jothi) coming out on bail in the above bail application in the above court, since bails are granted by courts in the such case. If he comes out on bail, he will indulge in such further activities which will be prejudicial to the 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 in Polur Police Station in Cr.No.277/2018 under Sections 379, 430 IPC against the accused Selvaraj and Sundar, a bail application was filed on behalf of the accused Thiru. Selvaraj in Hon'ble Judicial Magistrate Court, Polur in Cr.M.P.No.2334/2018 and the bail was granted on 11.04.2018 and an anticipatory bail application was filed on behalf of the co-accused Thiru.Sundar before Hon'ble Vacation Court Judge, Tiruvannamalai in Cr.M.P.No.1671/2018 and it was granted on 24.05.2018 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.385/2019 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 379, 430 IPC whereas the offences involved in the ground case are under Sections 307,379,430,353 IPC r/w 21(5) Tamil Nadu Mines and Mineral Development and Regulations Act 1957 and Sec 3(2) of Tamil Nadu Property (Prevention of Damages & 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 D.O.No.30/2019-C2 dated 22.05.2019, passed by the second respondent is set aside. The detenu, Jothi, son of Muniyappan, aged about 34 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,
Home,Prohibition and Excise Department,
Secretariat, Chennai - 600 009

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

3. The Inspector of Police,
Arni Taluk Police Station, Arni,
Tiruvannamalai District.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai -600 009.
5. The Superintendent of Prison,
Central Prison, Vellore.
6. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1016 of 2019

Kak (28/09/2019)



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