

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

Coram

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

H.C.P. No. 1037 of 2019

Chitra

... Petitioner

-vs-

1.State of Tamil Nadu

Rep by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009

2.The District Collector & District Magistrate,
Erode District, Erode.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling upon the production of the records relating to the detention order dated 13.05.2019 made in detention memo Cr.M.P.No.08/Goonda/C1 dated 13.05.2019 passed by the second respondent herein quash the same and direct the respondents to produce the body or person of the petitioner's son namely, Vasanthkumar @ Vasanth, Aged 20 years, banded as Goondas and now confined in Central Prison, Coimbatore, Coimbatore District before this Court and set him at liberty.

For Petitioner : Mr.N.Chinnaraj

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, Vasanthkumar @ Vasanth, S/o. Krishnamurthy, aged 20 years. The detenu has been detained by the second respondent by his order in

Cr.M.P.No.08/Goonda/C1 dated 13.05.2019 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru Vasanthakumar alias Vasanth is now lodged at District Prison, Gobichettipalayam as a remand prisoner in Gobichettipalayam Police Station Crime No.187/2019 under Sections 294(b), 302, 307 Indian Penal Code and he has not moved any bail petition in the above case in any court. However, I am aware that it is real possibility coming out on bail in the above case by filing bail petition before the concerned court in future. Because, I am aware that in the similar nature of offence case registered in Gobichettipalayam Police Station Crime No.539/2012 under Section 302, 380 Indian Penal Code, the arrested accused Yuvaraj was released on bail in Criminal Miscellaneous Petition Number 1546/2012 on 20.11.2012 by the order of the District Principal Sessions Court, Erode. Accordingly, if Thiru.Vasanthakumar alias Vasanth filed bail petition in Gobichettipalayam Police Station Crime No.187/2019 under Section 294(b), 302, 307 Indian Penal Code case before the concerned court in future and on coming out on bail against he will indulge in such activities and it was revealed on perusal of his previous antecedents....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Gobichettipalayam Police Station Crime No.539/2012 under Sections 302 and 380 Indian Penal Code, wherein, the arrested accused Yuvaraj was released on bail in CrI.M.P.No.1546/2012 on 20.11.2012 by the order of the District Principal Sessions Court, Erode 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 offence under Sections 302 and 380 IPC whereas the offences involved in the ground case are under Sections 294(b) and 307 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 Cr.M.P.No.08/Goonda/C1 dated 13.05.2019, passed by the second respondent is set aside. The detenu, Vasanthkumar @ Vasanth, S/o. Krishnamurthy, aged 20 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,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009
2. The District Collector & District Magistrate,
Erode District, Erode.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Joint Secretary to Govt,
Public Law & Order Dept,
Fort St. George, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1037 of 2019

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