

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. 1053 of 2019

Kanchana

... Petitioner

-vs-

1.State of Tamil Nadu
Rep by its Secretary to Government,
Home,Prohibition and Excise Department,
Secretariat,
Chennai - 600 009

2.The Commissioner of Police,
Greater Chennai,
Chennai - 07

3.The Inspector of Police,
H4 Korukkupet Police Station,
Chennai - 21

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus petition to produce the detenu Boopathy S/o Kuttiyappan aged about 29 years, residing at No.12, Thattankulam Street, Korrukupet, Chennai - 21 was branded as Goonda by the order of detention passed by the 2nd respondent in Memo No. BCDFGISSSV No.251/2019 dated 14.05.2019 who is confined at Central Prison, Puzhal and set him at liberty.

For Petitioner : Mr.R.C.Paul Kanagaraj

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, Boopathy S/o Kuttiyappan aged about 29 years. The detenu has been detained by the second respondent by his order Memo No. BCDFGISSSV No.251/2019 dated 14.05.2019 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 adverse cases 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 Boopathy is in remand in H6 R.K. Nagar Police Station Cr.No.403/2019, H1 Washermenpet Police Station Cr.No.272/2019, H4 Korukkupet Police Station Cr.Nos.203/2019 and 207/2019 and lodged at Central Prison, Puzhal, Chennai. He has moved bail applications for H4 Korukkupet Police Station Cr.Nos.203/2019 and 207/2019 before the Court of Principal Sessions, Chennai in CrI.M.P.Nos.8983/2019 and 8984/2019 respectively and both the bail applications are pending. He has not moved any bail application for H6 R.K.Nagar Police Station Cr.No.403/2019 and H1 Washermenpet Police Station Cr.No.272/2019. The sponsoring authority has stated that the relatives of Thiru.Boopathy are taking action to take him on bail in H6 R.K.Nagar Police Station Cr.No.403/2019 and H1 Washermenpet Police Station Cr.No.272/2019 by filing bail application before the appropriate Court. In a case registered u/s 147, 148, 341, 294(b), 336, 427, 392 r/w 397 & 506(ii) IPC in M2 Madhavaram Milk Colony Police Station Cr.No.17/2019, bail was granted by the Principal

District and Sessions Court, Tiruvallur in Crl.M.P.No.817/2019. Hence I infer that it is very likely of his coming out on bail in H4 Korukkupet Police Station Cr.Nos.203/2019 and 207/2019 and also there is real possibility of his coming out on bail in H6 R.K. Nagar Police Station Cr.No.403/2019 and H1 Washermenpet Police Station Cr.No.272/2019 by filing bail application before the appropriate court, since in similar case bail is granted by the Court after a lapse of time....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered under Sections 147, 148, 341, 294(b), 336, 427, 392 r/w 397 & 506(ii) IPC in M2 Madhavaram Milk Colony Police Station Cr.No.17/2019 and bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.817/2019 and therefore, there is a real possibility of the detenu coming out on bail in the adverse cases and ground case 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), 336, 427, 392 r/w 397 & 506(ii) IPC whereas the offences involved in the adverse cases and ground case are under Sections 341, 294(b), 394, 397 and 506(ii) IPC; 341, 294(b), 324, 307 and 506(ii) IPC; 147, 323, 294(b), 392 and 506(ii) IPC and 147, 341, 294(b), 336, 427, 397 and 506(ii) IPC. Further, the detaining authority has observed that the detenu has not filed bail applications in respect of the first and third adverse cases but the relatives of the detenu are taking steps to take him out on bail in those cases. There is no material to substantiate the same. 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. BCDFGISSSV No.251/2019 dated 14.05.2019, passed by the second respondent is set aside. The detenu, Boopathy S/o Kuttiyappan aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

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

2.The Commissioner of Police,
Greater Chennai,
Chennai - 07

3.The Inspector of Police,
H4 Korukkupet Police Station,
Chennai - 21

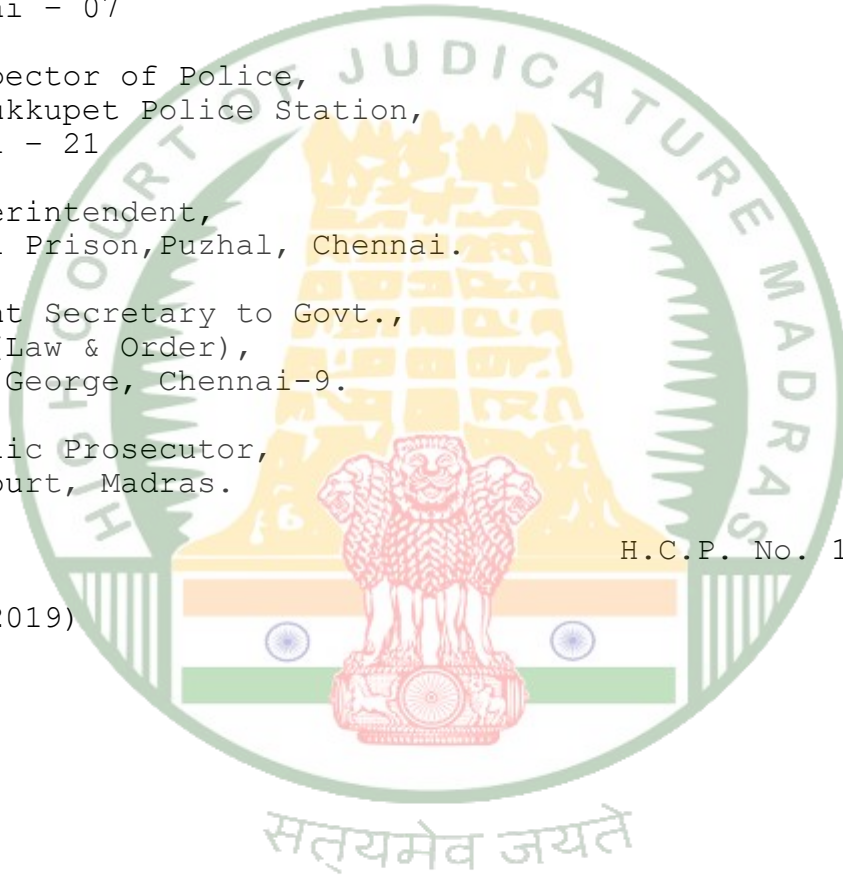
4.The Superintendent,
Central Prison,Puzhal, Chennai.

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

6.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1053 of 2019

KK(CO)
CB(14/10/2019)



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