

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

Coram

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

H.C.P. No.1073 of 2019

V.Nathiya ... Petitioner

-vs-

1.The Secretary to Govt,
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 in connection with the order of detention passed by the second respondent 08.05.2019 in BCDFGISSSV No.235 of 2019 against the petitioner's husband Vinoth @ Arch Vionth, male, aged about 30 years, son of Venkatesan, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Illiyas

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, Vinoth @ Arch Vionth, son of Venkatesan, male, aged about 30 years. The detenu has been detained by the second respondent by his order in

BCDFGISSSV No.235 of 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 3 of the grounds of detention are extracted below:

"3.I am aware that Thiru Vinoth @ Arch Vinoth is in remand in T3 Korattur Police Station Crime No.210/2019. He has not moved any bail application for T3 Korattur P.S. Cr.No.210/2019 so far. The sponsoring authority has stated that the relatives of Thiru Vinoth @ Arch Vinoth is taking action to take him out on bail by filing a bail application for T3 Korattur P.S. Cr.No.210/2019 before the appropriate court. Further, in a similar case, registered at F1 Chintadripet P.S.Cr.No.809/2014,u/s 147,148,341,307 IPC @ 302 IPC bail was granted by the Principal Sessions Judge at Chennai in CrI.M.P.No.17395/2014. Hence, i infer that there is real possibility of his coming out on bail in T3 Korattur P.S.Cr.No.210/2019 by filing bail application before the appropriate court since in similarly placed cases bails are granted by courts 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 at F1 Chintadripet P.S.Cr.No.809/2014,u/s 147,148,341,307 IPC @ 302 IPC bail was granted by the Principal Sessions Judge at Chennai in CrI.M.P.No.17395/2014 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 147,148,341,307 IPC @ 302 IPC whereas the offences involved in the ground case are under Section 302 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 BCDFGISSSV No.235 of 2019 dated 08.05.2019, passed by the second respondent is set aside. The detenu, namely, Vinoth @ Arch Vionth, son of Venkatesan, male, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mmi/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 the Government
(Public Law&Order), Fort.St.George, Chennai-9.
- 5.The Public Prosecutor,
High Court, Madras.

RR(CO)
CB(17/10/2019)

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