

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

Coram

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

H.C.P. No.1067 of 2019

Velmurugan

... Petitioner

-vs-

1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai - 600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the entire records relating to the petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 25.12.2018 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.11/Goonda/2018, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely Karthik, S/o. (Late) Subramani, aged 24 years, before this Court and set the petitioner's brother at liberty.

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For Petitioner : Mr.R.Sasikumar

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 brother of the detenu, Karthik, S/o. (Late) Subramani, aged 24 years. The detenu has been detained by the second respondent by his order in Memo Cr.M.P.No.11/Goonda/2018, dated 25.12.2018, 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.Though the order of detention is challenged on various grounds, the main submission of the learned counsel for the petitioner is that the detaining authority, in para 5 of the grounds of detention, while expressing subjective satisfaction with regard to the real possibility of the detenu coming out on bail in the cases in which he was on remand, has observed that the detenu has moved bail petitions in respect of the fourth adverse case and ground case in Crime Nos.550 of 2018 and 607 of 2018 on the file of Kangayam Police Station and the same were dismissed on 10.12.2018 in CrI.M.P.Nos.3544 of 2018 and 3543 of 2018 respectively and there is possibility of coming out on bail in the above cases. But the same is not supported by any material. Hence the subjective satisfaction expressed is vitiated.

4.The detaining authority, in para 5 of the grounds of detention, while considering the real possibility of the detenu coming out on bail in the cases in which he was on remand, has referred to the remand of the detenu in the adverse cases and the ground case and proceeded further to observe that the bail petition filed by the detenu in the fourth adverse case and ground case came to be dismissed. The detaining authority has not mentioned whether another bail petition has been moved by the detenu or his relatives in respect of the said cases. Therefore, there is no material to show that another bail petition has been moved by the detenu or his relatives in those cases. Therefore, the subjective satisfaction arrived by the detaining authority is not supported by material and it vitiates the order of detention. On this ground alone, the order of detention is vitiated and liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo Cr.M.P.No.11/Goonda/2018, dated 25.12.2018 passed by the second respondent is set aside. The detenu, Karthik, S/o. (Late) Subramani, aged 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

- 1.The Secretary to Govt,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George,Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Tiruppur, Tiruppur District.
- 3.The Superintendent
Central Prison,Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government
Public (Law and order)
Fort. St. George
Chennai 9.

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GP(CO)
SP(02/08/2019)