

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. 1099 of 2019

S.Nandhakumar

... Petitioner

-vs-

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

2.The Commissioner of Police,
Chennai Metro City, Vepery,
Chennai - 07.

.... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus petition to call for the records in No.252/BCDFGISSSV/2019 dated 15.05.2019 on the file of the second respondent to produce the petitioner/detenu - S.Nandhakumar, S/o.Sekar, now confined at Central Prison, Puzhal before this Court and set the petitioner at liberty forthwith.

For Petitioner : Mr.T.V.G.Kartheeban

For Respondents : Mr.C.Iyyappa Raj
Addl.Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The detenu himself is the petitioner. The detenu has been detained by the second respondent by his order in No.252/BCDFGISSSV/2019 dated 15.05.2019 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 Nandhakumar 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 Crl.M.P.Nos.9199/2019 and 9196/2019 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 CrI.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.252/2019 dated 15.05.2019, passed by the second respondent is set aside. The detenu, S.Nandhakumar, S/o.Sekar, 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

सत्यमेव जयते

mmi/ssm

To

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

2.The Commissioner of Police,
Chennai Metro City, Vepery,
Chennai - 07.

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

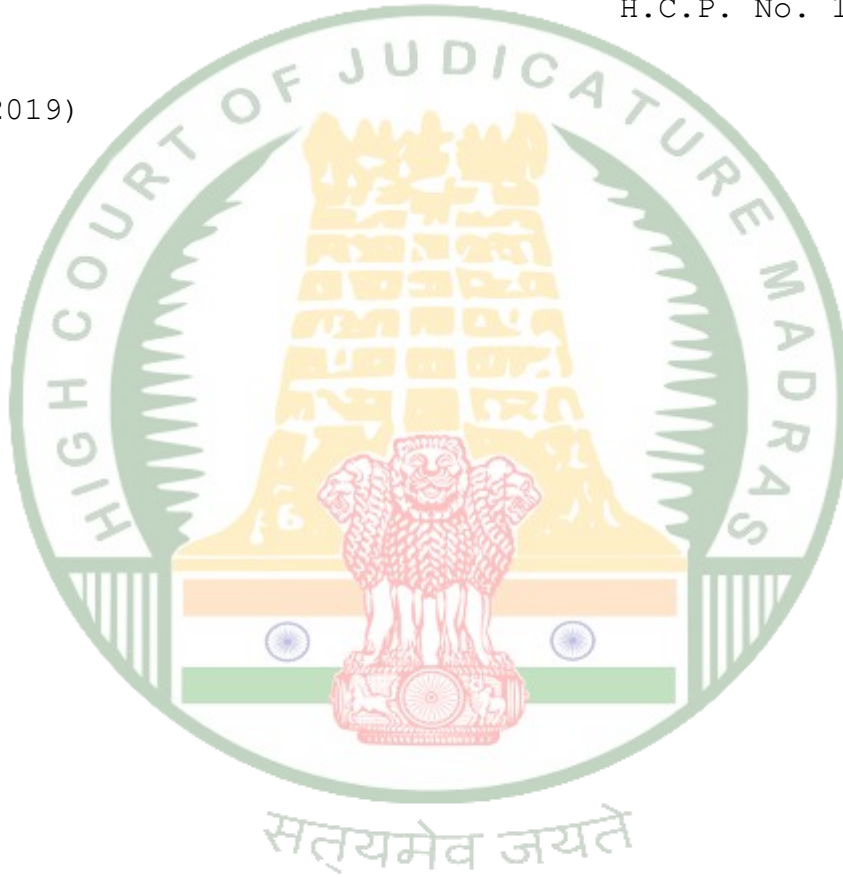
4.The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Government,
Public (L&O), Fort St.George, Chennai-9.

+1cc to Mr.T.V.G.Kartheeban, Advocate SR.69604

H.C.P. No. 1099 of 2019

SJ(CO)
CB(09/10/2019)



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