

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.1075 of 2019

Saira Banu

... Petitioner

-vs-

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

2.The Commissioner of Police/Detaining Authority,
City Police Office,
Huzur Road, Coimbatore City,
Coimbatore - 18.

... 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 son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 31.05.2019 on the file of the second respondent herein made in proceedings Memo C.No.42/G/IS/2019, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely J.Nisarudeen @ Arath Nisar, S/o. Jamesha, aged 24 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

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, J.Nisarudeen @ Arath Nisar, S/o. Jamesha, aged 24 years . The detenu has been detained by the second respondent by his order in Memo C.No.42/G/IS/2019 dated 31.05.2019, 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 as in the said case, the offence involved are under Sections 302, 201, 147, 148, 364 IPC and bail was granted by Judicial Magistrate No.VI, Coimbatore whereas in the ground case, the offence involved are under Sections 147, 364 and 302 IPC and it can be tried only by the Sessions Court. Therefore, there is non-application of mind on the part of the detaining authority and the subjective satisfaction arrived by the detaining authority is not proper.

4.A perusal of the grounds of detention would show that the detaining authority has relied on the similar case in D1 Ramanathapuram Police Station Crime No.875 of 2017 for the offence punishable under Sections 302, 201, 147, 148 and 364 IPC, in which, bail was granted by the Judicial Magistrate No.VI, Coimbatore. The ground case has been registered for the offence under Sections 147, 364 and 302 IPC. In paragraph 9 of the grounds of detention, the detaining authority, relying on the above similar case, stated that there is real possibility of the detenu coming out on bail by filing bail application in the ground case, without taking into consideration that the Sessions Court can only try the offence punishable under Section 302 IPC and bail can be granted by the Sessions Court. Hence there is non-application of mind on the part of the detaining authority in arriving at subjective satisfaction and the impugned order of detention is liable to be set aside on this ground.

5.In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo C.No.42/G/IS/2019 dated 31.05.2019, passed by the second respondent is set aside. The

detenu, namely, J.Nisarudeen @ Arath Nisar, S/o. Jamesha, aged 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//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/Detaining Authority,
City Police Office,
Huzur Road, Coimbatore City,
Coimbatore - 18.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P. No.1075 of 2019

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srg 18/09/2019

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