

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

Coram

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

H.C.P. No. 1105 of 2019

Gomathi ... Petitioner/Wife of the Detenu

-vs-

State Rep. by:

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in C.M.P.No.22/Goonda/C2/2019 dated 25.05.2019 on the file of the District Magistrate and District Collector, Salem District, Salem, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Lallu @ Lalluprasath S/o Sekar (L) aged about 29 years now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.S.Rajanikanth

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, Lallu @ Lalluprasath, S/o (Late) Sekar, aged about 29 years. The detenu has been detained by the second respondent by his order in C.M.P.No.22/Goonda/C2/2019 dated 25.05.2019 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. 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 4 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 not filed bail petition in respect of the ground case in Crime No.61 of 2019 on the file of Karumalaikoodal Police Station. However, placing reliance upon the bail order granted by the Court below, the detaining authority has stated that there is likelihood of the detenu coming out on bail. Thus, there is non-application of mind on the part of the Detaining Authority.

4. As rightly contended by the learned counsel appearing for the petitioner, the detaining authority referred to the fact that no bail petition was filed in the ground case. However, the detaining authority proceeded further to express subjective satisfaction that there is real possibility of the detenu coming out on bail, which shows total non-application of mind. Thus, on this sole ground, the impugned detention order is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.22/Goonda/C2/2019 dated 25.05.2019, passed by the second respondent is set aside. The detenu, Lallu @ Lalluprasath, S/o (Late) Sekar, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

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

H.C.P. No.1105 of 2019

LN(CO)
SP(03/10/2019)



WEB COPY