

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

Coram

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

H.C.P. No.1117 of 2019

Pechiyammal

... Petitioner

-vs-

- 1.The Commissioner of Police
Office of the Commissioner of Police,
Greater Chennai.
- 2.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai - 600 066.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records pertaining to the order of detention passed by the first respondent herein made in No.180/BCDFGISSSV/2019 dated 09.04.2019 and to set aside the same and direct the first respondent to produce the body of the detenu Siva, aged 30 years, S/o. Kodi Thevar, and now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.T.S.Srinivasan

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, Siva, S/o. Kodi Thevar, male, aged about 30 years. The detenu has been detained

by the first respondent by his order No.180/BCDFGISSSV/2019 dated 09.04.2019 holding to be a "Drug Offender", as contemplated under Section 2(e) 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 several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel for the petitioner submitted that the detenu was found in possession of 21 kgs of Ganja, which attracts statutory bar under NDPS Act whereas in the similar case relied upon by the detaining authority, there is no such bar as the quantity being lesser. 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. Siva is in remand in N.I.B, C.I.D, Chennai Unit Cr.No.21/2019 and he has moved a bail application for N.I.B.C.I.D, Chennai Unit Cr.No.21/2019 before the Court of Principal Special Judge, NDPS Act Cases in CrI.M.P.No.378/2019 and the same is pending. It is pertinent to note that in a similar case registered at P-4 Basin Bridge Police Station Crime No.327/2018 u/s 8(c) r/w 20 (b) (ii) (B) of NDPS Act bail was granted by the Principal Special Judge for NDPS Court, Chennai in CrI.M.P.No.662/2018. Hence, I infer that it is very likely of his coming out bail in N.I.B.C.I.D, Chennai Unit Cr.No.21/2019 since in similarly placed cases bails are granted by the Courts after a lapse of time. If he comes out on bail, he will indulge in such further activities which will be prejudicial to the maintenance of public health and 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 P-4 Basin Bridge Police Station Crime No.327/2018 u/s 8(c) r/w 20 (b) (ii) (B) of NDPS Act, bail was granted by the Principal Special Judge for NDPS Court, Chennai

in Crl.M.P.No.662/2018 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.21/2019 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 8(c) r/w 20 (b) (ii) (B) of NDPS Act whereas the offences involved in the ground case are under Sections 8(c) r/w 20 (b) (ii) (C) of NDPS Act 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 in No.180/BCDFGISSSV/2019 dated 09.04.2019, passed by the first respondent is set aside. The detenu, namely, Siva, S/o. Kodi Thevar, 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

mni/ssm

To

- 1.The Commissioner of Police
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Greater Chennai.
- 2.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai - 600 066.
4. The Joint Secretary to Government,
Public (Law & Order), Fort St.George, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No.1117 of 2019

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