

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

Coram

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

H.C.P. No. 1250 of 2019

V.Chandra ... Petitioner

-vs-

- 1.State of Tamil Nadu
Rep. by its Secretary,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009
- 2.The Commissioner of Police,
Salem City,
Salem.
- 3.The Inspector of Police,
Kondalampatti Police Station,
Salem 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 impugned order of detention passed by the second respondent in CMP No. 19/Goonda/Salem City/2019 dated 16.05.2019 and quash the same and consequently direct the respondents to produce the detenu Venkatesan, son of Pachaiyappan, the petitioner's husband aged about 30 years, now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.S.Parthasarathy

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, Venkatesan, son of Pachaiyappan, aged about 30 years. The detenu has been detained by the second respondent by his order in CMP No. 19/Goonda/Salem City/2019 dated 16.05.2019 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 6 of the grounds of detention are extracted below:

"6 I am aware that Venkatesan is in remand in the cases of Kondalampatty PS Cr.No.130/2018 u/s 392 IPC, Kondalampatty PS Cr.No.174/2019 u/s 392 IPC @ into 392 r/w 397 IPC & Section 66E of IT Act, 2000 and Section 4 of Tamilnadu Prohibition of Harassment of Women Act 2002 and Kondalampatty PS Cr No.189/2019, u/s 341, 392 r/w 397 IPC. He has not filed any bail petitions in these cases so far. However, it is learnt that the relative of Venkatesan is taking efforts to move bail applications to take him out on bail in the above said cases. I am also aware that bail has been granted by the Principal Sessions Judge, Salem in CMP No.2886/2018, dated 5.9.2018 in a similar case of Hasthampatty Police Station Cr No.278/2018 u/s 392, 397 & 506 (ii) IPC registered against one Thiru. Viji, who was remanded on 19.07.2018. Hence I infer that there is real possibility of his (Venkatesan) coming out on bail by filing bail applications in these cases, since bails are granted for similar cases by the concerned court or the higher court after efflux of certain time. If Venkatesan comes out on bail in

the above cases in which he is in remand he will indulge in further activities, which will be maintenance of the 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 in Hasthampatty Police Station Cr No.278/2018 under Sections 392, 397 and 506(ii) IPC bail was granted by the Principal Sessions Judge, Salem in C.M.P.No.2886/2018 on 05.09.2018 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 392, 397 and 506(ii) IPC whereas the offences involved in the adverse cases and ground case are under Sections 392 IPC, 392 IPC @ 392 r/w 397 IPC and Section 66 E of the Information and Technology Act, 2000 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and 341, 392 r/w 397 IPC respectively. 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 CMP No. 19/Goonda/Salem City/2019 dated 16.05.2019, passed by the second respondent is set aside. The detenu, Venkatesan, son of Pachaiyappan, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

-s/d-

Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

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

2.The Commissioner of Police,
Salem City, Salem.

WEB COPY

3.The Inspector of Police,
Kondalampatti Police Station,
Salem District.

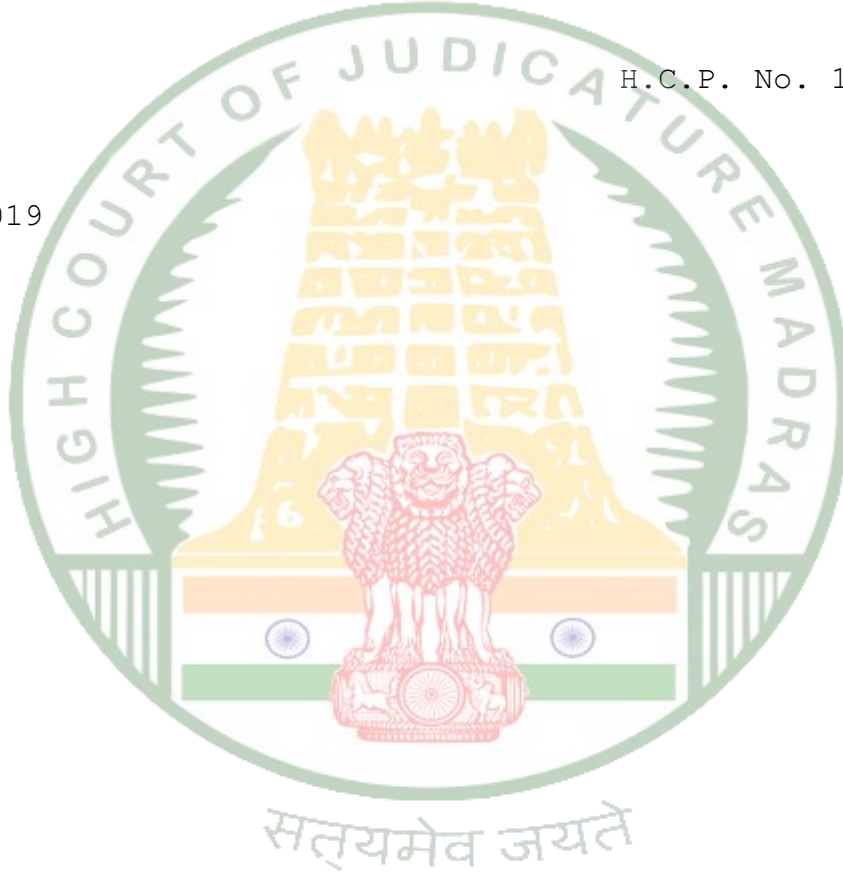
4.The Superintendent of Prison,
Central Prison, Salem.

5.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.S.Parthasarathy Advocate sr75435

H.C.P. No. 1250 of 2019

ev(co)
aa24/09/2019



WEB COPY