

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

Coram

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

H.C.P. No. 1142 of 2019

Bharani Petitioner/wife of Detenu

-vs-

- 1.State of Tamil Nadu
Rep. by its Secretary,
Home,Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Greater Chennai Commissioner's Office,
Egmore, Chennai. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records of the detention order No.204/BCDFGISSV/2019 dated 04.05.2019 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Siva @ Sivakumar, male, aged 29 years, S/o. Rajendran, confined in Central Prison, Puzhal, Chennai and produce the body of the detenu before this Court and set him at liberty.

For Petitioner : Mr.L.Infant Dinesh
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 @ Sivakumar, male, aged 29 years, S/o. Rajendran. The detenu has been

detained by the second respondent by his order in BCDFGISSSV No.204/2019 dated 04.05.2019 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.Amidst several grounds raised, learned counsel for the petitioner pointed out that the detaining authority has expressed his awareness that the detenu is in remand in the ground case and adverse case in Crime Nos.58 of 2019 and 124 of 2019 and he has moved bail application in the ground case in Crime No.58 of 2019, which was dismissed and thereafter filed another bail application and the same is pending before this Court in Crl.O.P.No.11578 of 2019. The detaining authority has further stated that the detenu has not moved any bail application in Crime No.124 of 2019 but the relatives of the detenu are taking steps to take him out on bail. Further, the detaining authority has relied on the bail order granted to the co-accused in Crime No.58 of 2019, by the Principal Sessions Court, Chennai and inferred that there is very likely of the detenu coming out on bail in the adverse case and ground case. Therefore, subjective satisfaction expressed by the detaining authority is vitiated.

4.The detaining authority, in para 5 of the grounds of detention, while considering the real possibility of the detenu coming out on bail in the cases in which he was on remand, has referred to the remand of the detenu in the adverse case and the ground case and proceeded further to observe that the bail application filed by the detenu in the ground case came to be dismissed and he has again filed a bail application before this Court and the same is pending. Though the bail application of the detenu is pending before this Court, the detaining authority has relied on the bail order granted by the Principal Sessions Court, Chennai to the co-accused in Crime No.58 of 2019 and inferred that there is likelihood of the detenu coming out on bail. Therefore, there is non-application of mind on the part of the detaining authority in passing the order of detention and on this ground alone, the order of detention is vitiated and liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in BCDFGISSSV No.204/2019 dated 04.05.2019, passed by the second respondent is set aside. The detenu, Siva @ Sivakumar, male, aged 29 years, S/o. Rajendran,

is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

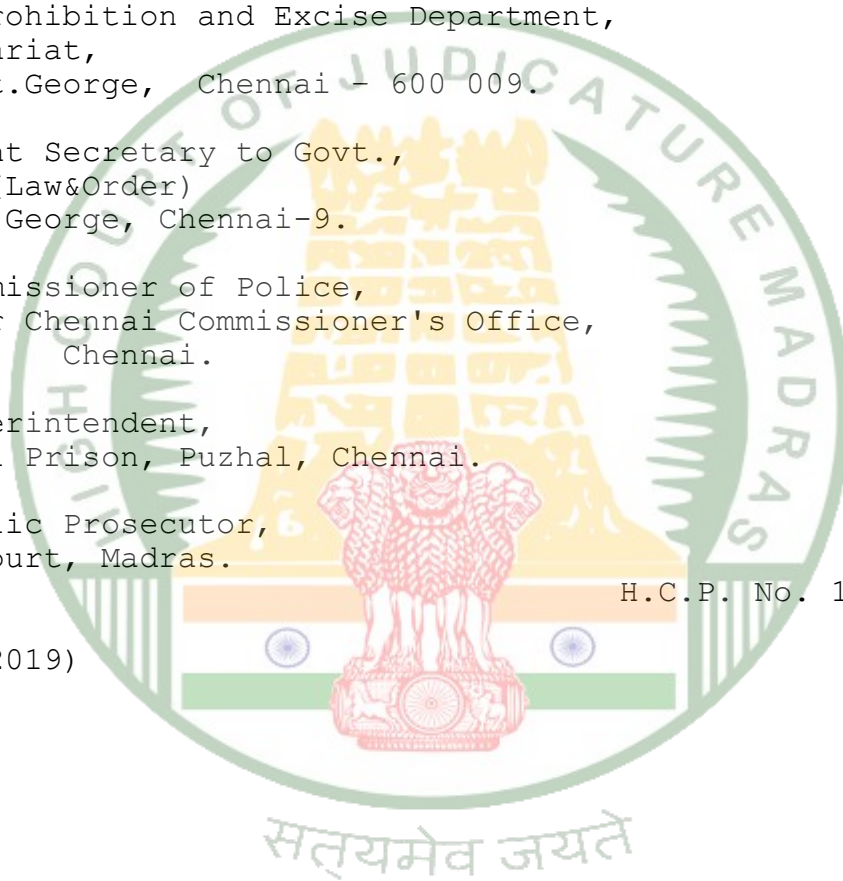
mmi/ssm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai - 600 009.
- 2.The Joint Secretary to Govt.,
Public (Law&Order)
Fort.St.George, Chennai-9.
- 3.The Commissioner of Police,
Greater Chennai Commissioner's Office,
Egmore, Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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PVS (CO)
CB(17/10/2019)



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