

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

Coram

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

H.C.P. No. 1170 of 2019

Priya Petitioner/Friend of Detenue

-vs-

1.The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Fort St.George, Chennai - 600 009

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

.... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records connected with the order of the second respondent herein concerned in No.279/BCDFGISSSV/2019 dated 25.05.2019 and quash the order of detention passed therein by the passed by the second respondent herein against the detenu and consequently directing the respondents herein to produce the body and person of the detenu by name Nagaraj, aged about 25 years, Son of Francis, now detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Sasikumar

For Respondents : Ms.V.Saradha Devi
Government Advocate(Crl.Side)

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the friend of the detenu, Nagaraj, Son of Francis, male, aged about 25 years. The detenu has been detained by the second respondent by his order in Memo No.279/BCDFGISSSV/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 Government Advocate (Crl.Side) 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 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 4 of the grounds of detention are extracted below:

"4 I am aware that Thiru. Nagaraj is in remand in M4 Red Hills Police Station Cr.No.207/2019 and lodged at Central Prison, Puzhal, Chennai. He has not moved any bail application for M4 Red Hills Police Station Cr.No.207/2019. The sponsoring authority has stated that the relatives of Thiru. Nagaraj are taking action to take him out on bail in M4 Red Hills Police Station Cr.No.207/2019 by filing bail application before the appropriate court. In a similar case registered u/s 341,294(b),323, 336, 427, 307 & 506(ii) IPC in F2 Egmore Police Station Cr.No.145/2018 bail was granted by the Court of Principal Sessions, Chennai in Crl.MP No.6184/2018. Hence, I infer that there is real possibility of his coming out on bail in M4 Red Hills Police Station Cr.No.207/2019 by filing bail application before the appropriate court, since in similar cases bail is granted by the court 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 order....."

5.From a perusal of the detention order, it is seen that

the detaining authority has taken into consideration a similar case registered u/s 341,294(b),323, 336, 427, 307 & 506(ii) IPC in F2 Egmore Police Station Cr.No.145/2018, bail was granted by the Court of Principal Sessions, Chennai in Crl.MP No.6184/2018 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.207/2019 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 u/s 341,294(b),323, 336, 427, 307 & 506(ii) IPC whereas the offences involved in the ground case are under Sections 341, 294(b), 336, 427, 307, 397 and 506(ii) 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 Memo No.279/BCDFGISSSV/2019 dated 25.05.2019, passed by the second respondent is set aside. The detenu, Nagaraj, Son of Francis, male, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mni/ssm

To

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1170 of 2019

RSI (CO)
GMV (27/09/2019)



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