

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

Coram

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

H.C.P. No.1174 of 2019

Rajeswari

... Petitioner

-vs-

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 06.05.2019 on the file of the second respondent herein made in proceedings Memo CR.M.P.No.12/G/2019/E1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Thangaraj, S/o. Nataraj, aged 27 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner : Mr.R.Sasikumar

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 mother of the detenu, Thangaraj, S/o. Nataraj, aged 27 years. The detenu has been detained by the second respondent by his order in Memo CR.M.P.No.12/G/2019/E1,

dated 06.05.2019 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 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru. Thangaraj now lodged at Central Prison, Coimbatore as a remand prisoner in Thudiyalur Police Station Crime No.235/2018 under Section 454, 380 IPC, Crime No.186/2019 under Section 394 read with 397 IPC and in Cr.No.192/2019 under Section 392 IPC cases and his remand period has been extended till 20.05.2019 and he has not moved bail petitions in the above cases in any courts till the date. However, there is a real possibility coming out on bail by filing bail petitions in the above cases before the concerned in future. Because, i am also aware that in similar case registered in Coimbatore District, Periyanaickenpalayam Police Station Crime No.198/2017 under Section 392 IPC, the bail was granted to the arrested accused Vignesh by the Principal District and Sessions Judge, Coimbatore in Criminal Miscellaneous Petition Number 1615/2017 on 11.07.2017. Accordingly, Thangaraj moved bail petitions before the concerned court in the above said cases in future and comes out on bail, it is revealed on perusal of his previous activities he will indulge in such activities. If he comes out on bail, he will indulge in further activities, which will be prejudicial to be maintenance of 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 Coimbatore District, Periyanaickenpalayam Police Station Crime No.198/2017 under Section 392 IPC, the bail was granted to the arrested accused Vignesh by the Principal District and Sessions Judge, Coimbatore in Criminal Miscellaneous Petition Number 1615/2017 on

11.07.2017 and therefore, there is a real possibility of the detenu coming out on bail 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 Section 392 IPC whereas the offences involved in the adverse cases are under Sections 454 and 380 IPC and 394 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 CR.M.P.No.12/G/2019/E1, dated 06.05.2019, passed by the second respondent is set aside. The detenu, namely, Thangaraj, S/o. Nataraj, aged 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

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

H.C.P. No.1174 of 2019

(CO)  
CB(03/10/2019)