

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

Coram

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

H.C.P. No. 1230 of 2019

Kannan

... Petitioner

-vs-

The State Represented by its

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

2.The District Collector and District Magistrate,
Office of District Collector and District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention dated 31.05.2019 passed by the respondents bearing No.D.O.No.39/2019-C2 and quash the same and produce the detenu Ponnan, aged about 46 years, S/o. Kannan, before this Court and set him at liberty forthwith from Central Prison, Vellore.

For Petitioner : Mr.R.Thirumoorthy

For Respondents : Mr.C.Iyyappa Raj
Addl. Public Prosecutor

सत्यमेव जयते
ORDER

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

The petitioner is the father of the detenu, Ponnan, S/o. Kannan, aged about 46 years. The detenu has been detained by the second respondent by his order in No.D.O.No.39/2019-C2 dated 31.05.2019, holding to be a "Sand Offender", as contemplated under Section 2(gg) 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 by the learned counsel for the petitioner to attack the impugned order of detention, he mainly focused his argument on the ground that though the detaining authority has observed that the bail petition filed on behalf of the detenu in the ground case has been dismissed and he has not filed another bail petition for the said case, he inferred that the detenu may come out on bail in the ground case. Learned counsel has further submitted that though the detaining authority relied on the special report of the sponsoring authority that the relatives of the detenu are taking steps to take the detenu on bail in the ground case by filing bail application, there is no such statement made in the special report. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention and therefore, subjective satisfaction expressed by the detaining authority is vitiated.

4.The detaining authority, after referring to the remand of the detenu in the ground case, has chosen to observe that the detenu has filed bail petition in the ground case and the same came to be dismissed on 29.05.2019 by the Tiruvannamalai District Vacation Court, Tiruvannamalai in Cr.M.P.No.2127 of 2019. It is further observed that the relatives of the detenu are taking steps to take him out on bail in the said case. But the same is not supported by any material. Further, as observed by the detaining authority, there is no such statement made by the sponsoring authority in the special report that the relatives of the detenu are taking steps to take him out on bail. In such circumstances, the observation of the detaining authority that the bail petition filed on behalf of the detenu in the ground case came to be dismissed but his relatives are taking steps to take him out on bail is not supported by material. There is nothing to show that such material was placed before the detaining authority at the time of clamping the order of detention. Hence the subjective satisfaction expressed by the detaining authority in this regard in para 5 of the grounds of detention is vitiated. 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 D.O.No.39/2019-C2 dated 31.05.2019, passed by the second respondent is set aside. The detenu, namely, Ponnan, S/o. Kannan, aged about 46 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

To

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

2.The District Collector and District Magistrate,
Office of District Collector and District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

3.The Superintendent,
Central Prison,Vellore.

4.The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.

+1 cc to M/s.R.Thirumoorthy,Advocate Sr.No. 68030

AKM/17.09.19/3P-7C /

H.C.P. No. 1230 of 2019

सत्यमेव जयते

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