

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 1256 of 2019

Bhavani ... Petitioner

-vs-

- 1.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
 - 2.The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
 - 3.The Inspector of Police,
Peranamallur Police Station,
Peranamallur,
Tiruvannamalai 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 1st respondent in D.O.No.44/2019-C2 dated 09.06.2019 and set aside the same, consequently direct the respondents to produce the detenu Asaithambi, male, aged 41 years, S/o. Chinnaiya, No.2/98 Road Street, Anmaruthai Village, Chetpet Taluk, Tiruvannamalai District, now confined in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.B.Jawahar

For Respondents : Mr.R.Prathap Kumar
: Addl. Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu Asaithambi, S/o. Chinnaiya, male, aged 41 years. The detenu has been detained by the first respondent by his order in D.O.No.44/2019-C2 dated 09.06.2019, 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.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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru. Asaithambi, was remanded in Sub-Jail, Vandavasi, in connection with the ground case in Peranamallur Police Station Cr.No.248/2019 u/s 294(b), 379, 430, 353, 307 IPC and 21(5) Mines and Mineral (Development and Regulations) Act 1957. A bail application was filed on behalf of the accused before Hon'ble Tiruvannamalai District Vacation Court in Cr.M.P.No.2229/2019 and the same was dismissed on 29.05.2019 and another bail petition has been filed on behalf of the accused before the Hon'ble High Court Chennai, in CrI.O.P.No.14144/2019, dated 03.06.2019 and it is pending in the above court. I am also aware that in a similar case registered in Cheyyar Police Station Cr.No.670/2018 u/s 294(b), 379, 430, 353, 307 r/w 21(5) Mines and Mineral (Development and Regulations) Act 1957 an Sec 3 of Tamil nadu Property (Prevention of Damages and Loss) Act,1992 against Thiru Pachaiyppan S/o,.

Kannaiyan bail was dismissed by the Hon'ble District Sessions Court, Tiruvannamalai in Cr.M.P.No.2896/2018, dated 31.07.2018 and he was released on bail by the orders of the Hon'ble High Court, Chennai in Crl.O.P.No.19618/2018 dated 03.08.2018. Hence, I infer that there is real possibility of him (Thiru Asaithambi) coming out on bail in the above bail application in the above court, since bails are granted by the courts in such cases....."

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 Cheyyar Police Station Cr.No.670/2018 u/s 294(b), 379, 430, 353, 307 IPC r/w 21(5) Mines and Mineral (Development and Regulations) Act 1957 and Sec 3 of Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992 against Thiru Pachaiyppan S/o,. Kannaiyan bail was dismissed by the District Sessions Court, Tiruvannamalai in Cr.M.P.No.2896/2018, dated 31.07.2018 and he was released on bail by the orders of the High Court, Chennai in Crl.O.P.No.19618/2018 dated 03.08.2018 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 u/s 294 (b), 379, 430, 353, 307 IPC r/w 21(5) Mines and Mineral (Development and Regulations) Act 1957 and Sec 3 of Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992 whereas the offences involved in the ground case are u/s 294(b), 379, 430, 353, 307 IPC and 21(5) Mines and Mineral (Development and Regulations) Act 1957. 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 D.O.No.44/2019-C2 dated 09.06.2019, passed by the first respondent is set aside. The detenu, Asaithambi, S/o. Chinnaiya, male, aged 41 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mmi/ssm
To

- 1.The District Collector and District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
- 2.The Joint Secretary to Government,
Public (Law and order) Fort.St.George, Chennai 9.
- 3.The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
- 4.The Inspector of Police,
Peranamallur Police Station,
Peranamallur,
Tiruvannamalai District.
- 5.The Superintendent,
Central Prison, Vellore.
- 6.The Public Prosecutor,
High Court, Madras.

H.C.P. No.1256 of 2019

ssd
A.SK(14/10/2019)



WEB COPY