

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

H.C.P. No. 1290 of 2019

Umadevi ...Petitioner/Wife of the Detenu

-vs-

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.

...Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 20.06.2019 in D.O.No.47/2019-C2 against the petitioner's husband Raja, male, aged 29 years, S/o. Subramani, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 Raja, S/o. Subramani, aged 29 years. The detenu has been detained by the second respondent by his order in D.O.No.47/2019-C2 dated 20.06.2019, 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 perused the materials available on record.

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 also aware that Thiru. Raja was remanded in Central Prison, Vellore in connection with the ground case in Kannamangalam Police Station Cr.No.300/2019 u/s 294(b), 379, 430, 353, 307 IPC r/w 21(5) Mines and Mineral (Development and Regulations) Act,1957. Further, I submit that a bail petition has been filed on behalf of the accused Thiru. Raja before Hon'ble Tiruvannamalai District Sessions Court, Tiruvannamalai in Cr.M.P.No.2743/2019,dated 18.06.2019 and it is ordered to be called on 27.06.2019. Further I am also aware that in a similar case registered in Polur Police Station in Cr.No.277/2018 under Section 379,430 IPC against the accused Thiru. Selvaraj and Thiru. Sundar, a bail application was filed on behalf of the accused Thiru.Selvaraj in Hon'ble Judicial Magistrate Court, Polur in Cr.M.P.No.2334/2018 and the bail was granted on 11.04.2018 and an anticipatory bail application was filed on behalf of the co-accused Thiru.Sundar before Hon'ble Vacation court judge, Tiruvannamalai in Cr.M.P.No.1671/2018 and it was granted on 24.05.2018. Hence, I infer that there is a real possibility of him (Thiru.Raja) coming out on bail in the above bail application in the above court, since bails are granted by the courts in such case. 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 in Polur Police Station in Cr.No.277/2018 under Sections 379, 430 IPC against the accused Thiru. Selvaraj and Thiru. Sundar, a bail application was filed on behalf of the accused Thiru.Selvaraj in Hon'ble Judicial Magistrate Court, Polur in Cr.M.P.No.2334/2018 and the bail was granted on 11.04.2018 and an anticipatory bail application was filed on behalf of the co-accused Thiru.Sundar before Hon'ble Vacation

court judge, Tiruvannamalai in Cr.M.P.No.1671/2018 and it was granted on 24.05.2018 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 under Sections 379,430 IPC whereas the offences involved in the ground case are u/s 294(b), 379, 430, 353, 307 IPC r/w 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.47/2019-C2 dated 20.06.2019, passed by the second respondent is set aside. The detenu, namely, Raja, S/o. Subramani, aged 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

mmi/ssm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent,
Central Prison,Vellore.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai -600 009.
5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1290 of 2019

Kak(18/11/2019)