

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

Coram

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

H.C.P. No. 1327 of 2019

Durga

... Petitioner

-vs-

1.The State of Tamil Nadu
Rep by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 07.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records and quash the same leading to the detention of the petitioner's husband namely Rajeev, Son of Ravi, aged 34 years, detained under Act 14/82 vide detention order dated 06.05.2019 on the file of the 2nd respondent herein made in Detention Order BCDFGISSSV No.216/2019 and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and set him at liberty from Central Prison, Puzhal, Chennai.

For Petitioner : Mr.P.Udayakumar

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 wife of the detenu, Rajeev, Son of Ravi, aged 34 years. The detenu has been detained by the second respondent by his order in BCDFGISSSV No.216/2019, 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 case and 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 Rajeev is in remand in G-3 Kilpauk Police Station Crime No.87/2019 and 106/2019. He has moved a bail application for G-3 Kilpauk Poilce Station Crime No.87/2019 before the Court of Principal Sessions Judge, Chennai in Crl.M.P.No.7252/2019 and the bail was dismissed on 10.04.2019. And, he has moved a bail application for G-3 Kilpauk Police Station Crime No.87/2019 before the High Court of Madras, in Crl.O.P.No.10792/2019 and the bail was pending. He has moved a bail application before the Principal Sessions Judge, Court, Chennai in Crl.M.P.No.8334/2019 for G.3 Kilpauk Police Station Cr.No.106/2019 and the bail was granted on 30.04.2019. He is not yet offer sufficient sureties in the case and still in prison. In a similar case registered at P-1 Pulianthope Police Station Crime No.179/2018 u/s 147,148,341,294(b),323,394 and 506(ii) IPC bail was granted by the Court of 5th Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.1422/2018. Hence, I infer that by offering sufficient sureties, he may

come out on bail in G-3 Kilpauk Police Station Cr.No.106/2019 and it is very likely of his coming out on bail in G-3 Kilpauk Police Station Crime No.87/2019, since in similarly placed cases bails are granted by courts after a lapse of time. If he comes out on bail, he will indulge in such further activities in future and therefore there is a compelling necessity to pass an order of detention with a view to prevent him from indulging in such prejudicial activities in future....."

5.From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered at P-1 Pulianthope Police Station Crime No.179/2018 u/s 147,148,341,294(b),323,394 and 506(ii) IPC bail was granted by the Court of 5th Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.1422/2018 and therefore, there is a real possibility of the detenu coming out on bail in the adverse case and ground case 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 147,148,341,294(b),323,394 and 506(ii) IPC whereas the offences involved in the adverse case and ground case are under Sections 148,294(b),323,336,427,307 and 506(ii) IPC and 363, 392 r/w 394 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 BCDFGISSSV No.216/2019, dated 06.05.2019, passed by the second respondent is set aside. The detenu, Rajeev, Son of Ravi, male, aged 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

सत्यमेव जयते

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

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

2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai - 07.

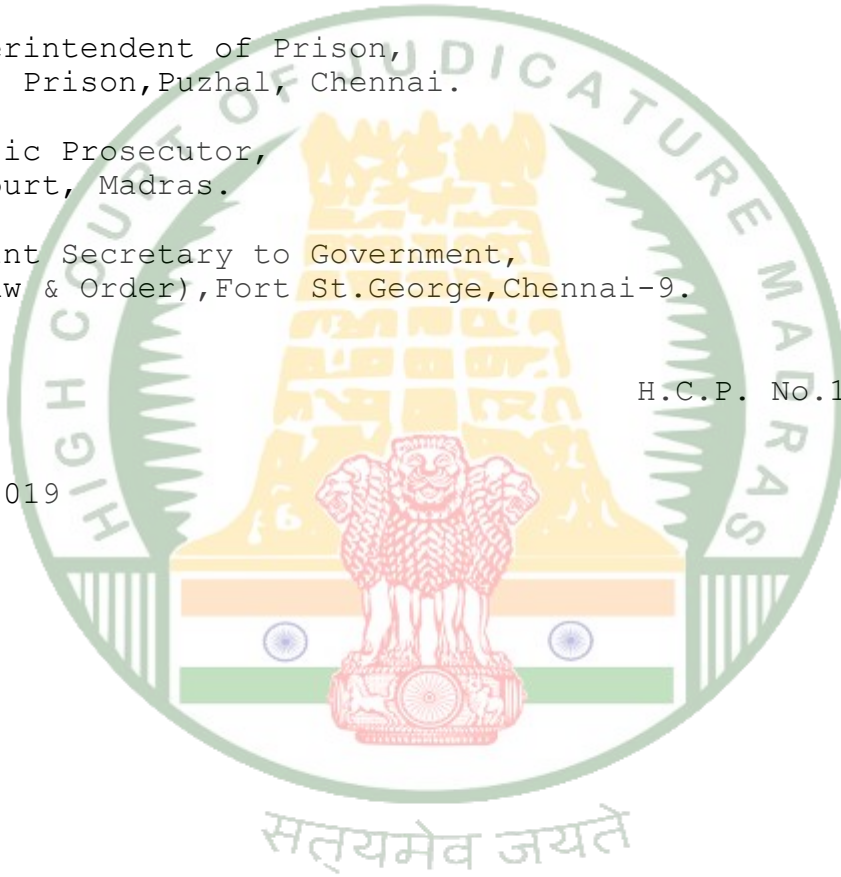
3.The Superintendent of Prison,
Central Prison,Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Government,
Public (Law & Order),Fort St.George,Chennai-9.

H.C.P. No.1327 of 2019

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