

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

Coram

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

H.C.P. No. 1332 of 2019

T.Syedalifathima

... Petitioner

-vs-

1.The State of Tamil Nadu

Rep. by the Secretary to Government,
Prohibition and Excise Department,
Fort St.George,
Chennai - 9.

2.The Commissioner of Police,

Greater Chennai City,
Vepery, Chennai - 600 007.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records pertaining to the in Memo No.308/BCDFGISSSV/2019 dated 06.06.2019 on the file of the second respondent herein and set aside the same and direct the respondents herein to produce the petitioner's husband Thamim Ansari, son of Kamar Jamal, aged 36 years, now confined in the Central Prison, Puzhal, Chennai before this Court and set him at liberty

For Petitioner : Mr.C.K.M.Appaji

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 Thamim Ansari, son of Kamar Jamal, aged 36 years. The detenu has been detained by the second respondent by his order in Memo

No.308/BCDFGISSSV/2019 dated 06.06.2019 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 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 5 of the grounds of detention are extracted below:

"5.I am aware that Thiru Thamim Ansari is in remand in H1 Washermenpet Police Station Cr.Nos.321/2019, 322/2019, 324/2019 and 325/2019 and lodged at Central Prison, Puzhal Chennai. He has not moved any bail application for Nos.321/2019, 322/2019, 324/2019 and 325/2019 cases. The sponsoring authority has stated that the relatives of Thiru Thamim Ansari are taking action to take him out on bail in H1 Washermenpet Police Station Cr.Nos.321/2019, 322/2019, 324/2019 and 325/2019 cases by filing bail application before the appropriate court. In a case registered u/s 341,294(b),336, 427,392 r/w 397, 506 (ii) IPC in M4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in Crl.M.P.No.3177/2018. Hence, I infer that there is real possibility of his coming out on bail in Nos.321/2019, 322/2019, 324/2019 and 325/2019 cases by filing bail application before the appropriate court, since in similar case bail is granted by the court after a lapse of time. If he comes out on bail, he will indulge in 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 the similar

case registered u/s 341,294(b),336, 427,392 r/w 397, 506(ii) IPC in M4 Red Hills Police Station Cr.No.369/2018, bail was granted by the Principal District and Sessions Court, Tiruvallur in CrI.M.P.No.3177/2018 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 341,294(b),336, 427,392 r/w 397, 506 (ii) IPC in M4 Red Hills Police Station Cr.No.369/2018 whereas the offences involved in the adverse cases and ground case are under Sections 379 and 341, 294(b), 323, 427, 336, 392, 397 and 506(ii) 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 Memo No.308/BCDFGISSSV/2019 dated 06.06.2019, passed by the second respondent is set aside. The detenu, Thamim Ansari, son of Kamar Jamal, aged 36 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The the Secretary to Government,
Prohibition and Excise Department,
Fort St.George,
Chennai - 9.

2.The Commissioner of Police,
Greater Chennai City,
Vepery, Chennai - 600 007.

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

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. 1332 of 2019

NRL(CO)
CB(13/11/2019)



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